

0868

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO  
BEFORE THE HONORABLE JOHN E. MUNTER, JUDGE  
DEPARTMENT NO. 505

LESLIE J. WHITELEY AND )  
LEONARD WHITELEY, )  
PLAINTIFFS, )  
VS. ) NO. 303184  
RAYBESTOS-MANHATTAN, INC., ET )  
AL., )  
DEFENDANTS. )  
\_\_\_\_\_)

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
THURSDAY, JANUARY 20, 2000  
(VOLUME 7, PAGES 1008)

REPORTED BY: JUDITH ANN OSSA, CSR 2310  
OFFICIAL REPORTER

JUDITH ANN OSSA, CSR NO. 2310

0869

APPEARANCES:

FOR THE PLAINTIFFS:

WARTNICK, CHABER, HAROWITZ & TIGERMAN  
BY: MADELYN J. CHABER, ESQ.  
ROBERT BROWN, ESQ.  
MARTHA A.H. BERMAN, ESQ.  
101 CALIFORNIA STREET, SUITE 2200  
SAN FRANCISCO, CALIFORNIA 94111-5802

FOR THE DEFENDANT PHILIP MORRIS INCORPORATED:

SHOOK, HARDY & BACON LLP  
BY: DAVID K. HARDY, ESQ.  
GERALD V. BARRON, ESQ.  
LUCY E. MASON, ESQ.

ONE MARKET, STEUART TOWER, NINTH FLOOR  
SAN FRANCISCO, CALIFORNIA 94105-1310.

FOR THE DEFENDANT R.J. REYNOLDS TOBACCO COMPANY:

WOMBLE, CARLYLE, SANDRIDGE & RICE  
BY: JEFFREY L. FURR, ESQ.  
200 WEST SECOND STREET  
WINSTON-SALEM, NORTH CAROLINA 27101

HOWARD, RICE, NEMEROVSKI, CANADY,  
FALK & RABKIN  
BY: H. JOSEPH ESCHER III  
THREE EMBARCADERO CENTER, 7TH FLOOR  
SAN FRANCISCO, CALIFORNIA 94111-4065

FOR DEFENDANT METALCLAD INSULATION CORPORATION:

20  
21  
22  
23  
24  
25  
26  
27  
28  
  
0870  
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

MISCIAGNA & COLOMBATTO  
BY: GREGORY S. ROSSE, ESQ.  
27 MAIDEN LANE, 4TH FLOOR  
SAN FRANCISCO, CALIFORNIA 94108

JUDITH ANN OSSA, CSR NO. 2310

EXAMINATION OF PLAINTIFFS' WITNESSES

WITNESS NAME	PAGE
RONALD M. DAVIS, M.D.....	870
DIRECT EXAMINATION (RESUMED).....	870
DIRECT EXAMINATION (CONTINUED).....	922
CROSS-EXAMINATION.....	930

PLAINTIFFS' EXHIBITS

PLAINTIFFS EXHIBITS 1814 & 1815	
MARKED FOR IDENTIFICATION.....	870
PLAINTIFFS EXHIBIT 1627	
PREMARKED FOR IDENTIFICATION.....	913
PLAINTIFFS EXHIBIT 1627	
RECEIVED IN EVIDENCE.....	913
PLAINTIFFS EXHIBIT 1816	
MARKED FOR IDENTIFICATION.....	920
PLAINTIFFS EXHIBIT 1817	
MARKED FOR IDENTIFICATION.....	922
PLAINTIFFS EXHIBIT 362	
RECEIVED IN EVIDENCE.....	927
PLAINTIFFS EXHIBIT 363-A	
MARKED FOR IDENTIFICATION.....	928
DEFENSE EXHIBITS	
DEFENSE EXHIBIT 6222	
MARKED FOR IDENTIFICATION.....	939
DEFENSE EXHIBIT 6222	
RECEIVED IN EVIDENCE.....	942
DEFENSE EXHIBITS 6223-6225	
MARKED FOR IDENTIFICATION.....	984

JUDITH ANN OSSA, CSR NO. 2310

THURSDAY, JANUARY 20, 2000 9:45 A.M  
(THE FOLLOWING PROCEEDINGS WERE HELD IN THE  
COURTROOM, IN THE PRESENCE OF THE JURY)  
THE COURT: GOOD MORNING, EVERYBODY.  
OKAY. ARE WE PICKING UP WITH DR. DAVIS?

6 MS. CHABER: YES. HE'S GATHERING HIS THINGS TO  
7 BRING UP.  
8 THE COURT: ALL RIGHT.  
9 MS. CHABER: AND, YOUR HONOR, ACTUALLY MAYBE I  
10 CAN HAVE TWO DOCUMENTS MARKED NOW WHILE WE ARE WAITING, SO  
11 WE WON'T LOSE ANY TIME.  
12 THE COURT: OKAY. THAT'S A GOOD IDEA.  
13 THE CLERK: PLAINTIFFS' EXHIBITS 1814 AND 1815.  
14 (DOCUMENTS MORE PARTICULARLY  
15 LISTED IN THE INDEX MARKED  
16 FOR IDENTIFICATION PLAINTIFFS'  
17 EXHIBITS # 1814 AND 1815)  
18 MS. CHABER: THERE ARE COPIES FOR YOUR HONOR,  
19 AND THERE SHOULD BE TABS THAT CORRESPOND.  
20 THE COURT: THERE ARE.  
21 TESTIMONY OF  
22 RONALD M. DAVIS, M.D.,  
23 A WITNESS CALLED ON BEHALF OF THE PLAINTIFFS, HAVING BEEN  
24 PREVIOUSLY DULY SWORN, TESTIFIED FURTHER AS FOLLOWS:  
25  
26 DIRECT EXAMINATION (RESUMED)  
27 BY CHABER: Q. GOOD MORNING, DR. DAVIS.  
28 A. GOOD MORNING.  
JUDITH ANN OSSA, CSR NO. 2310

0872

1 MS. CHABER: THE COURT DID WANT ME TO START  
2 , CORRECT?  
3 THE COURT: YES, PLEASE,, I DID.  
4 MS. CHABER: OKAY. I ANTICIPATED THAT.  
5 Q. DR. DAVIS, I WANTED TO SHIFT OUR FOCUS A LITTLE  
6 BIT TO LESLIE WHITELEY.  
7 HAVE YOU REVIEWED MATERIALS AND FORMED OPINIONS  
8 ABOUT LESLIE WHITELEY?  
9 A. YES, I HAVE.  
10 Q. AND CAN YOU TELL US -- I BELIEVE IN THIS CASE  
11 IT'S BEEN STATED BY DEFENSE COUNSEL THAT THEY DO NOT DISPUTE  
12 THAT THIS IS A SMALL CELL CANCER OF THE LUNG WITH THE  
13 PRIMARY SITE BEING THE LUNG.  
14 AND HEARING NOTHING, I GUESS I WILL GO ON  
15 FURTHER.  
16 DR. DAVIS, DOES CIGARETTE SMOKING CAUSE SMALL  
17 CELL CANCER OF THE LUNG?  
18 A. YES, IT DOES.  
19 Q. AND SMALL CELL CANCER OF THE LUNG IS A TYPE OF  
20 LUNG CANCER?  
21 A. THAT'S CORRECT.  
22 Q. AND ARE THERE OTHER TYPES OF LUNG CANCER?  
23 A. YES.  
24 Q. DOES CIGARETTE SMOKING CAUSE THE OTHER TYPES OF  
25 LUNG CANCER?  
26 A. YES. I MEAN, THERE MIGHT BE A FEW VERY RARE  
27 FORMS OF TUMORS IN THE LUNG, SARCOMA, FOR EXAMPLE, WHICH  
28 WOULD NOT BE RELATED TO SMOKE.  
JUDITH ANN OSSA, CSR NO. 2310

0873

1 BUT THE MAJOR CAUSES OF LUNG CANCER ARE CAUSED BY  
2 SMOKING, SQUAMOUS CELL CARCINOMA, ADENOCARCINOMA, SMALL CELL  
3 CARCINOMA, LARGE CELL CARCINOMA.  
4 Q. AND THE SMALL CELL CARCINOMA OF THE LUNG, HOW  
5 FREQUENTLY DOES THAT OCCUR IN WOMEN SMOKERS?  
6 A. WELL, IT'S MUCH MORE COMMON IN WOMEN WHO SMOKE  
7 THAN IN WOMEN WHO DON'T SMOKE. IF YOU LOOK AT THAT TYPE OF  
8 LUNG CANCER AS WELL AS OTHER TYPES OF LUNG CANCER CAUSED BY

9 SMOKING, MOST OF THOSE CASES ARE SMOKERS.

10 WE ESTIMATE THAT SMOKING IS RESPONSIBLE FOR 85  
11 PERCENT OF LUNG CANCER IN MEN AND WOMEN.

12 Q. AND CAN YOU TELL US TO A REASONABLE DEGREE OF  
13 MEDICAL CERTAINTY WHAT CAUSED LESLIE WHITELEY'S LUNG CANCER?

14 A. IT WAS HER CIGARETTE SMOKING.

15 Q. AND WHY DO YOU SAY THAT?

16 A. WELL, THERE ARE A FEW VERY IMPORTANT CAUSES OF  
17 LUNG CANCER. I THINK WE TOUCHED ON THIS YESTERDAY. AND  
18 ACTIVE CIGARETTE SMOKING IS BY FAR THE MOST IMPORTANT CAUSE  
19 OF LUNG CANCER.

20 PASSIVE SMOKING IS ALSO RESPONSIBLE FOR SOME  
21 CASES OF LUNG CANCER IN NONSMOKERS WHO ARE EXPOSED TO  
22 SECONDHAND SMOKE.

23 AS I BELIEVE I MENTIONED YESTERDAY, THERE ARE  
24 SOME 3,000 LUNG CANCER DEATHS EACH YEAR IN THE UNITED STATES  
25 WHICH ARE CAUSED BY SECONDHAND SMOKE. BUT A HUGE NUMBER, A  
26 MUCH LARGER NUMBER OF LUNG CANCERS ARE CAUSED BY ACTIVE  
27 SMOKING, BY FAR AND AWAY. AS I MENTIONED, 80 TO 90 PERCENT  
28 OF LUNG CANCERS ARE CAUSED BY ACTIVE SMOKING.

JUDITH ANN OSSA, CSR NO. 2310

0874

1 A MUCH LOWER NUMBER MIGHT BE ATTRIBUTED TO  
2 RADON. BUT EVEN THERE, MOST PEOPLE WHO GET LUNG CANCER  
3 WHERE RADON IS A FACTOR, THEY'RE CIGARETTES SMOKERS TOO. SO  
4 THE TWO EXPOSURES COMBINE TO CAUSE THAT LUNG CANCER, RADON  
5 PLUS CIGARETTE SMOKING.

6 IF YOU LOOK AT LESLIE WHITELEY'S SMOKING HISTORY,  
7 IT'S A HUGE SMOKING HISTORY.

8 Q. CAN YOU TELL US WHAT YOU MEAN BY "HUGE SMOKING  
9 HISTORY"?

10 A. SURE. I'M JUST LOOKING FOR SOME NOTES WHERE I  
11 DID SOME CALCULATIONS. OFF THE TOP OF MY HEAD -- I CAN FIND  
12 THEM IN A FEW MINUTES.

13 OFF THE TOP OF MY HEAD, WE ARE TALKING ABOUT MORE  
14 THAN 25 YEARS OF SMOKING. WE ARE TALKING ABOUT -- AS I  
15 CALCULATED IT FROM THE INFORMATION I FOUND, WE'RE TALKING  
16 ABOUT SMOKING MORE THAN A PACK A DAY ON AVERAGE OVER THE  
17 COURSE OF 25-PLUS YEARS.

18 AND IF YOU ASSUME SHE SMOKED HER CIGARETTES LIKE  
19 PEOPLE IN GENERAL SMOKE THEIR CIGARETTES IN THE UNITED  
20 STATES, SHE TOOK INTO HER LUNGS MORE THAN 2.4 MILLION PUFFS  
21 OF CIGARETTE SMOKE DURING HER LIFETIME.

22 AND WHEN YOU CONSIDER THE FACT THAT THOSE PUFFS  
23 OF CIGARETTE SMOKE ARE TAKEN INTO THE LUNGS, ARE INHALED,  
24 WHERE THOSE FOUR OR 5,000 CHEMICALS IN TOBACCO SMOKE GO INTO  
25 THE FINE PASSAGES OF YOUR LUNG, ARE HELD THERE FOR A PERIOD  
26 OF TIME AND THEN EXHALED, WHEN THAT'S DONE MORE THAN 2.4  
27 MILLION TIMES, THAT'S AN ENORMOUS EXPOSURE TO CANCER-CAUSING  
28 CHEMICALS, VASTLY GREATER THAN THE EXPOSURE THAT WE SEE TO

JUDITH ANN OSSA, CSR NO. 2310

0875

1 MOST THINGS IN THE ENVIRONMENT THAT MAY CAUSE CANCER.

2 Q. NOW, DID YOU LOOK AT THE ISSUE OF WHETHER  
3 MARIJUANA SMOKING CAUSED HER -- CONTRIBUTED TO LESLIE  
4 WHITELEY'S LUNG CANCER?

5 A. YES.

6 Q. AND WHAT DID YOU CONCLUDE?

7 A. THE INFORMATION ON HER MARIJUANA SMOKING, WHICH I  
8 FOUND MOST DETAILED -- AND WHICH I FELT I COULD RELY ON TO  
9 THE GREATEST DEGREE AND WITH THE GREATEST DEGREE OF  
10 CERTAINTY -- WAS FROM HER RESPONSES TO THE QUESTIONS THAT  
11 WERE POSED TO HER, THE INTERROGATORIES. AND THERE WAS

12 SUBSTANTIAL DETAIL ON HER MARIJUANA SMOKING HISTORY, MUCH  
13 MORE THAN I FOUND ANYWHERE ELSE, FOR EXAMPLE, IN HER MEDICAL  
14 RECORDS.

15 I THINK SHE WAS ASKED BY THE COUNSEL FOR THE  
16 DEFENSE MORE THAN 100 QUESTIONS ABOUT HER MARIJUANA SMOKING  
17 HISTORY. AND TO THE BEST OF HER ABILITY, SHE TRIED TO  
18 REMEMBER WHAT HER MARIJUANA SMOKING WAS 10, 15, 20 YEARS  
19 AGO.

20 FROM THAT INFORMATION, I CONSIDERED HER MARIJUANA  
21 SMOKING TO BE VERY OCCASIONAL AND QUITE SOME TIME AGO,  
22 HAVING ENDED MORE THAN A DECADE BEFORE HER DIAGNOSIS OF LUNG  
23 CANCER.

24 AND IF YOU COMPARE THE NUMBER OF PUFFS OF  
25 MARIJUANA SMOKE THAT SHE TOOK IN TO THE NUMBER OF PUFFS OF  
26 CIGARETTE SMOKE THAT SHE TOOK IN, THERE'S ABSOLUTELY NO  
27 COMPARISON.

28 Q. AND DID YOU PREPARE SOME CHARTS TO DEMONSTRATE  
JUDITH ANN OSSA, CSR NO. 2310

0876

1 THE CONTRAST BETWEEN THE NUMBER OF CIGARETTE PUFFS THAT  
2 LESLIE WHITELEY SMOKED AND THE NUMBER OF MARIJUANA PUFFS?

3 A. YES.

4 MS. CHABER: YOUR HONOR, AT THIS TIME -- IT'S  
5 BEEN PROVIDED TO DEFENSE COUNSEL -- I WOULD LIKE TO SHOW  
6 EXHIBITS 1 -- EXCUSE ME -- 1814 AND 1815 FOR DEMONSTRATIVE  
7 PURPOSES.

8 THE COURT: ANY OBJECTION?

9 MR. FURR: NO OBJECTION FOR ILLUSTRATIVE  
10 PURPOSES.

11 THE COURT: THAT'S WHAT SHE SAID.  
12 YOU MAY SHOW IT.

13 MS. CHABER: Q. DOCTOR, DO YOU HAVE A SET UP  
14 THERE TO LOOK AT? IF NOT, I'VE GOT AN EXTRA ONE. I'M  
15 SLIGHTLY MORE ORGANIZED TODAY THAN I WAS YESTERDAY.

16 THIS MAY TAKE A MOMENT. SO MUCH FOR  
17 ORGANIZATION.

18 WHILE THEY'RE GETTING THIS GOING (REFERRING TO  
19 ELECTRONIC EQUIPMENT), LET ME ASK YOU A COUPLE OF  
20 QUESTIONS.

21 Q. YOU MENTIONED THESE --

22 THE COURT: CAN I JUST INTERRUPT?  
23 CAN I JUST SEE 1814 AND 1815?

24 MS. CHABER: I THOUGHT I WROTE THE NUMBERS. I  
25 THINK THEY ARE THE SAME.

26 YOUR HONOR, CAN I POINT SOMETHING OUT TO YOU. IN  
27 THE LOWER LEFT-HAND CORNER (INDICATING).

28 THE COURT: YOU'RE RIGHT. OKAY.

JUDITH ANN OSSA, CSR NO. 2310

0877

1 MS. CHABER: Q. LET ME ASK YOU A COUPLE OF  
2 QUESTIONS.

3 YOU WERE PROVIDED INFORMATION ABOUT MS. WHITELEY  
4 FROM MY OFFICE; CORRECT?

5 A. CORRECT.

6 Q. AND AMONG THE THINGS YOU WERE PROVIDED, YOU WERE  
7 PROVIDED MEDICAL RECORDS?

8 A. STACKS OF THEM.

9 Q. AND AS MORE MEDICAL INFORMATION CAME IN, WE  
10 PROVIDED YOU ADDITIONAL INFORMATION; IS THAT RIGHT?

11 A. CORRECT.

12 Q. AND YOU HAD -- DID YOU READ MS. WHITELEY'S  
13 DEPOSITION?

14 A. YES.

15 Q. AND ABOUT HOW MANY DAYS, DO YOU RECALL, THAT THE  
16 DEPOSITION WENT ON FOR?  
17 A. THREE, AS I RECALL.  
18 Q. AND SHE WAS UNDER OATH IN THAT DEPOSITION?  
19 A. I ASSUME SO. I WASN'T THERE, BUT I GUESS THERE  
20 WAS SOMETHING ABOUT THE RAISING HER RIGHT HAND ROUTINE AT  
21 THE BEGINNING. I KIND OF SKIP OVER THAT AND TRY TO GET TO  
22 THE MEAT OF THE DEPOSITION.  
23 Q. AND THE ANSWERS TO INTERROGATORIES AND THE  
24 QUESTIONS THAT WERE ASKED BY DEFENSE COUNSEL OF HER ABOUT  
25 HER MARIJUANA USAGE, WERE THOSE UNDER OATH?  
26 A. I ASSUME SO, YES.  
27 Q. OKAY. YOU DON'T RECALL SEEING ANYTHING AT THE  
28 END THAT VERIFIED THAT THESE WERE TRUE AND CORRECT TO THE  
JUDITH ANN OSSA, CSR NO. 2310

0878

1 BEST OF HER ABILITY?  
2 A. I BELIEVE IT WAS THERE. I WAS GIVEN A NUMBER OF  
3 DEPOSITIONS TO LOOK AT. AND WHEN I PICK THOSE UP AND SEE  
4 IT'S A DEPOSITION, I SORT OF ASSUME THAT THE BEGINNING HAS  
5 THE BIT ABOUT BEING SWORN IN AND THE BIT AT THE END HAS THE  
6 BIT ABOUT ACKNOWLEDGING THIS IS THE BEST -- THE BEST  
7 INFORMATION ACCORDING TO THE PERSON'S RECOLLECTION.  
8 Q. AND IS THAT TRUE AS WELL FOR INTERROGATORIES?  
9 A. THAT'S MY UNDERSTANDING.  
10 Q. AND YOU READ -- DID YOU READ DEPOSITIONS OF  
11 WITNESSES FOR THE DEFENSE AS WELL AS WITNESSES FOR THE  
12 PLAINTIFF?  
13 A. I SAW SOME OF THEM.  
14 Q. OKAY.  
15 A. I CAN'T SAY THAT I READ EVERY ONE OF THEM. SOME  
16 OF THEM I READ IN MORE DETAIL THAN OTHERS.  
17 Q. DID YOU READ A DEPOSITION BY A DR. TASHKIN?  
18 A. I DID. AGAIN, I MAY NOT HAVE READ EVERY SINGLE  
19 WORD OF IT, BUT I PERUSED IT, AND THE PARTS THAT SEEMED  
20 PERTINENT, I READ IN MORE DETAIL.  
21 Q. OKAY. AND IN PREPARING THESE CHARTS THAT YOU'VE  
22 PREPARED, DID YOU TAKE INTO CONSIDERATION ALL OF THE  
23 INFORMATION THAT YOU THOUGHT PERTINENT WITH RESPECT TO  
24 MS. WHITELEY'S CONSUMPTION OF PUFFS OF CIGARETTES AND HER  
25 CONSUMPTION OF PUFFS OF MARIJUANA?  
26 A. YES.  
27 Q. THIS IS EXHIBIT 1814. THAT IS AS WELL AS I CAN  
28 DO ON THE FOCUS OF THAT.

JUDITH ANN OSSA, CSR NO. 2310

0879

1 DR. DAVIS, CAN YOU EXPLAIN THIS -- AND MAYBE WE  
2 NEED YOU TO STEP DOWN AGAIN, IF THAT'S OKAY. YOU HAVEN'T  
3 HAD YOUR MORNING EXERCISE YET. I HAVEN'T MADE YOU GET UP  
4 YET.  
5 SOMEWHERE, THERE'S STILL A POINTER. HERE IT IS.  
6 (DISCUSSION OFF THE RECORD)  
7 MS. CHABER: AND LET ME JUST NOTE THE QUESTION  
8 THAT YOU JUST ASKED ME. ON THE LOWER LEFT-HAND CORNER,  
9 THERE'S A "1X" ON THIS CHART.  
10 MR. FURR: EXCUSE ME. WE DON'T HAVE THAT.  
11 MS. CHABER: YES, YOU DO.  
12 THE WITNESS: WHICH ONE DON'T THEY HAVE?  
13 WOULD YOU LIKE ME TO EXPLAIN IT NOW?  
14 MS. CHABER: Q. YES, I'D LIKE TO UNDERSTAND,  
15 FIRST OF ALL, WHAT WE ARE LOOKING AT IN TERMS OF THIS  
16 CHART.  
17 WHAT IS THIS?

18 A. THIS IS A CHART WHICH SHOWS THE CALCULATION OF  
19 HOW MANY PUFFS OF EITHER TOBACCO CIGARETTE SMOKE  
20 MS. WHITELEY HAD OVER THE COURSE OF HER LIFETIME AS WELL AS  
21 MARIJUANA PUFFS.

22 AND WHAT'S SHOWN HERE (INDICATING) ON THIS  
23 VERTICAL AXIS IS CUMULATIVE NUMBER OF PUFFS.

24 SO THAT MEANS, FOR EXAMPLE, FOR THE FIRST YEAR IN  
25 WHICH SHE BEGAN SMOKING, WE PLOTTED HOW MANY PUFFS OF  
26 CIGARETTE SMOKE -- THIS LINE IS FOR CIGARETTE SMOKE  
27 (INDICATING) -- HOW MANY PUFFS OF CIGARETTE SMOKE SHE TOOK  
28 IN THAT FIRST YEAR, 1972, THAT FIRST YEAR THAT SHE WAS  
JUDITH ANN OSSA, CSR NO. 2310

0880

1 SMOKING.

2 AND THEN FOR 1973, WE WOULD MAKE A SIMILAR  
3 CALCULATION, AND THEN ADD THAT NUMBER FOR 1973 TO 1972.

4 SO THE DATA POINT, SAY, FOR '73, WOULD REPRESENT  
5 ALL OF THE PUFFS OF CIGARETTE SMOKE THAT SHE HAD HAD UP TO  
6 THAT POINT.

7 SO FOR EACH YEAR, WE KEEP ADDING THE NEW YEAR'S  
8 PUFFS, THE PUFFS FOR THE NEW YEAR, PLUS ALL THOSE PUFFS FROM  
9 PRIOR YEARS.

10 Q. SO THIS IS A CUMULATIVE TOTAL OF THE NUMBER OF  
11 PUFFS AS OPPOSED TO ATTEMPTING TO GO YEAR BY YEAR AND  
12 DETERMINE SHE HAD THESE MANY PUFFS THIS YEAR AND THESE MANY  
13 PUFFS THAT YEAR?

14 A. CORRECT. SO THAT BY ABOUT 1979 OR SO, WHICH IS  
15 SHOWN RIGHT HERE (INDICATING), IF YOU GO UP VERTICALLY UNTIL  
16 YOU HIT THIS CURVE FOR CIGARETTE PUFFS, YOU CAN SEE THAT SHE  
17 HAD TAKEN IN ABOUT 500,000 CIGARETTE PUFFS BY THAT POINT, OR  
18 ABOUT A HALF A MILLION.

19 AND IF YOU KEEP MAKING THESE CALCULATIONS AND  
20 ADDING PUFFS YEAR BY YEAR, BY 1998, WHEN SHE QUIT HER  
21 CIGARETTE SMOKING, SHE HAD TAKEN IN MORE THAN 2.4 MILLION  
22 PUFFS OF CIGARETTE SMOKE, AS I MENTIONED EARLIER.

23 Q. NOW, LET ME JUST ASK A COUPLE OF QUESTIONS ON  
24 THAT BEFORE WE MOVE ON TO THE REST.

25 IN 1972, HOW OLD WAS LESLIE WHITELEY?

26 A. I BELIEVE 13.

27 Q. OKAY. AND WHEN SHE TURNED 18 -- SHE WAS BORN IN  
28 1959, IF THAT MAKES IT EASIER -- HOW MANY PUFFS OF CIGARETTE  
JUDITH ANN OSSA, CSR NO. 2310

0881

1 SMOKED HAD SHE HAD BY THE TIME SHE WAS 18 YEARS OLD?

2 A. THAT WOULD HAVE BEEN ABOUT 1977, I BELIEVE. SO  
3 IT WOULD LOOK LIKE SHE HAD TAKEN ABOUT 300,000 PUFFS OF  
4 CIGARETTE SMOKE BY THAT POINT.

5 Q. OKAY.

6 A. I SHOULD MENTION THAT THE WAY I PUT THIS  
7 INFORMATION TOGETHER IS BY TAKING THE INFORMATION FROM THOSE  
8 REPLIES TO THE INTERROGATORIES THAT I MENTIONED, INFORMATION  
9 ON HOW MANY CIGARETTES SHE SMOKED A DAY FOR DIFFERENT  
10 PERIODS IN HER LIFE.

11 Q. AND THEN, WHAT DID YOU DO WITH THAT?

12 A. AND THEN, WHAT I DID WITH IT TO CALCULATE THE  
13 NUMBER OF PUFFS, SINCE MOST PEOPLE DON'T KNOW HOW MANY PUFFS  
14 THEY TAKE PER CIGARETTE, MOST PEOPLE DON'T KNOW THAT FOR  
15 TODAY'S SMOKING MUCH LESS SMOKING 10 YEARS AGO OR 20 YEARS  
16 AGO, I TOOK THE AVERAGE NUMBERS OF PUFFS PER CIGARETTE.

17 THE RESEARCH SHOWS US HOW AMERICANS SMOKE. AND  
18 IN FACT, THERE HAVE BEEN -- I'M JUST REFRESHING MY  
19 RECOLLECTION HERE -- THERE HAVE BEEN AT LEAST 31 PUBLISHED  
20 STUDIES ON HOW MANY PUFFS PEOPLE TAKE WHEN THEY SMOKE A

21 CIGARETTE.  
22 AND IF I PUT TOGETHER THE RESULTS FROM ALL 31  
23 STUDIES, IT SHOWS THAT PEOPLE ON AVERAGE SMOKE A CIGARETTE  
24 BY TAKING 11 PUFFS.  
25 Q. THAT'S THE AVERAGE NUMBER?  
26 A. RIGHT. SOME SMOKERS OBVIOUSLY MAY SMOKE -- MAY  
27 TAKE EIGHT PUFFS PER CIGARETTE. SOME MAY TAKE 15 PUFFS PER  
28 CIGARETTE.

JUDITH ANN OSSA, CSR NO. 2310

0882

1 WHEN YOU ADD IT ALL TOGETHER FROM 31 STUDIES, ON  
2 AVERAGE, PEOPLE TAKE ABOUT 11 PUFFS PER CIGARETTE.

3 YOU FACTOR THAT IN, LOOKING AT HOW MANY  
4 CIGARETTES SHE SMOKED A DAY OVER THE COURSE OF HER SMOKING  
5 HISTORY, AND THAT'S HOW WE GET TOTAL NUMBER OF PUFFS.

6 NOW, WE HAVE TWO DIFFERENT RATES HERE DURING HER  
7 CIGARETTE SMOKING HISTORY (INDICATING). ONE IS FOR THE  
8 EARLIER YEARS OF HER CIGARETTE SMOKING, FROM 1972 TO 1978,  
9 WHEN SHE WAS SMOKING FEWER CIGARETTES THAN SHE SMOKED  
10 LATER. THAT IS TYPICALLY WHAT WE SEE. PEOPLE INCREASE THE  
11 NUMBER OF CIGARETTES THEY SMOKE OVER A PERIOD OF TIME.

12 AND SO SHE SMOKED, ON AVERAGE, 15 CIGARETTES PER  
13 DAY FROM 1972 TO 1978. AND YOU CAN SEE THAT RIGHT HERE  
14 (INDICATING) FOR THIS PART OF THE LINE.

15 Q. OKAY. AND THAT'S ENDING AT ABOUT 1978.

16 AND AT WHAT POINT -- HOW MUCH IS THE CUMULATIVE  
17 TOTAL OF PUFFS AT THAT POINT IN TIME, 1978?

18 A. IT LOOKS LIKE ABOUT 400,000.

19 AND THEN, FOR THE REST OF THE SMOKING HISTORY,  
20 SHE SMOKED MORE THAN 15 CIGARETTES PER DAY. ON AVERAGE,  
21 ABOUT 25 CIGARETTES PER DAY.

22 NOW, SHE DID NOT REPORT IT AS 25 CIGARETTES PER  
23 DAY. MOST PEOPLE WILL SAY A HALF A PACK, A PACK, A PACK TO  
24 A PACK AND A HALF. AND SHE REPORTED DURING THAT TIME PERIOD  
25 FROM 19 -- ROUGHLY 1979 TO 1998, SMOKING A PACK TO A PACK  
26 AND A HALF A DAY.

27 AND SINCE THERE ARE 20 CIGARETTES IN A PACK, 30  
28 CIGARETTES IN A PACK AND A HALF, YOU CAN TAKE AN AVERAGE

JUDITH ANN OSSA, CSR NO. 2310

0883

1 THERE AND SPLIT THE DIFFERENCE BETWEEN 20 AND 30, AND SAY 25  
2 CIGARETTES A DAY ON AVERAGE.

3 AND SO IF THAT'S WHAT YOU USE FOR YOUR  
4 CALCULATIONS, THIS IS THE KIND OF LINE WE GET (INDICATING).

5 AND THE TOTAL, AS I MENTIONED, WAS MORE THAN 2.4  
6 MILLION PUFFS. TO BE PRECISE, IT WAS 2,429,075 PUFFS OVER  
7 HER LIFETIME, WHICH COMES FROM 182,500 CIGARETTES.

8 SO THE 182,500 CIGARETTES MULTIPLIED BY 11 PUFFS  
9 PER CIGARETTE WOULD GIVE YOU THE FIGURE THAT'S MORE THAN 2.4  
10 MILLION.

11 THAT'S HOW I CAME UP WITH THIS INFORMATION FOR  
12 CIGARETTE PUFFS.

13 Q. OKAY. DID YOU COME UP WITH INFORMATION FOR  
14 MARIJUANA PUFFS?

15 A. YES.

16 Q. AND HOW DID YOU COME UP WITH THE INFORMATION FOR  
17 MARIJUANA PUFFS?

18 A. THIS INFORMATION WAS TAKEN AGAIN FROM HER REPLIES  
19 TO THOSE INTERROGATORIES, THOSE MORE THAN 100 QUESTIONS ON  
20 MARIJUANA SMOKING THAT SHE WAS GIVEN BY LAWYERS FOR THE  
21 DEFENSE.

22 AND I THINK THERE WERE FOUR OR FIVE PAGES OF  
23 DETAIL ON HER MARIJUANA SMOKING HISTORY, TO THE BEST OF HER



24 MEMORY, HER RECOLLECTION. AGAIN, HAVING BEEN FAIRLY DISTANT  
25 IN THE PAST, SHE WAS ASKED ABOUT HOW OFTEN SHE SMOKED, HOW  
26 MANY MARIJUANA CIGARETTES SHE WOULD SMOKE PER WEEK OR PER  
27 MONTH, HOW MANY PUFFS SHE WOULD TAKE, WHAT KIND OF MARIJUANA  
28 DID SHE SMOKE, WHO SHE WAS WITH, WHEN SHE SMOKED, ALL OF

JUDITH ANN OSSA, CSR NO. 2310

0884

1 THOSE KINDS OF QUESTIONS.

2 AND FROM THE DETAIL THAT SHE PROVIDED TO THE BEST  
3 OF HER RECOLLECTION, I PUT TOGETHER AN ESTIMATE ON THE  
4 NUMBER OF PUFFS OF MARIJUANA SMOKE IN HER YEARS OF MARIJUANA  
5 SMOKING.

6 Q. NOW, WHAT ASSUMPTIONS DID YOU MAKE WITH RESPECT  
7 TO -- FIRST OF ALL, ARE THERE 31 PUBLISHED STUDIES ON THE  
8 NUMBER, THE AVERAGE NUMBER OF PUFFS THAT SOMEBODY TAKES OF  
9 MARIJUANA?

10 A. NO.

11 Q. ARE THERE ANY PUBLISHED STUDIES ON THAT?

12 A. THERE MAY BE, BUT I'M NOT AWARE OF THEM.

13 THERE CERTAINLY WOULDN'T BE THE KIND OF RESEARCH  
14 ON MARIJUANA SMOKING THAT THERE IS ON CIGARETTE SMOKING.

15 Q. OKAY. SO HOW DID YOU PUT TOGETHER THE MARIJUANA  
16 PUFFS FROM THE INFORMATION THAT YOU WERE PROVIDED?

17 A. WELL, I DID HAVE TO MAKE A NUMBER OF  
18 ASSUMPTIONS. AND I TRIED TO BE AS FAIR AS I COULD WITH THE  
19 ASSUMPTIONS THAT I MADE.

20 FIRST OF ALL, SHE SAID THAT EVEN DURING HER  
21 HEAVIEST PERIOD OF MARIJUANA SMOKING, SHE SMOKED LESS THAN  
22 WEEKLY. WELL, LESS THAN WEEKLY COULD BE ONCE A MONTH, ONCE  
23 EVERY TWO MONTHS. IT'S HARD TO KNOW EXACTLY WHAT THAT  
24 MEANS.

25 AND SO MY CALCULATION FOR "LESS THAN WEEKLY" WAS  
26 ONCE EVERY TWO WEEKS. SOMETIMES IT MIGHT BE ONCE A MONTH.  
27 SOMETIMES MAYBE IT WAS ONCE THIS WEEK AND ONCE NEXT WEEK AND  
28 ONCE THE WEEK AFTER.

JUDITH ANN OSSA, CSR NO. 2310

0885

1 BUT SHE REPORTED THAT, ON AVERAGE, IT WOULD HAVE  
2 BEEN ONCE -- IT WOULD HAVE BEEN LESS THAN ONCE A WEEK. SO I  
3 SAID ONCE EVERY TWO WEEKS.

4 Q. ALL RIGHT. WHAT OTHER ASSUMPTIONS?

5 A. THE OTHER ASSUMPTIONS WERE RELATING TO THE NUMBER  
6 OF PUFFS PER EPISODE OF MARIJUANA SMOKING. AND SHE  
7 INDICATED THAT WHEN SHE SMOKED MARIJUANA WITH OTHER PEOPLE,  
8 WITH FRIENDS, FOR EXAMPLE, SHE WOULD TEND TO SMOKE -- TO  
9 TAKE ONLY A FEW PUFFS OF MARIJUANA SMOKE, NEVER MORE THAN  
10 THREE.

11 SO I INTERPRETED "NEVER MORE THAN THREE" TO MEAN  
12 SOMETIMES IT MIGHT HAVE BEEN THREE; SOMETIMES IT MIGHT HAVE  
13 BEEN TWO; SOMETIMES IT MIGHT HAVE BEEN ONE. WHY DON'T WE  
14 SPLIT THE DIFFERENCE AND SAY TWO. SO IF IT'S NO MORE THAN  
15 THREE, I SAID, "OKAY. ON AVERAGE, IT'S PROBABLY TWO," JUST  
16 TO MAKE SOME CALCULATIONS AND SEE WHAT WE COME UP WITH.

17 Q. OKAY. AND PRESUMABLY, WHEN SHE WAS SMOKING WITH  
18 OTHER PEOPLE, WAS IT INDICATED WHAT FORM THE MARIJUANA WAS  
19 IN? YOU KNOW, A ROLLED JOINT?

20 A. WELL, ON SOME OCCASIONS, AND FOR SOME TIME  
21 PERIODS, SHE INDICATED THAT SHE USED A BHONG, WHICH IS ALSO  
22 REFERRED TO AS A WATER PIPE, WHERE THE MARIJUANA SMOKE IS  
23 FILTERED THROUGH WATER. AND THERE IS -- THERE IS TUBING  
24 THAT COMES OUT OF THE GLASS CYLINDER OR THE CONTAINER THAT  
25 CONTAINS THE WATER.

26 AND PEOPLE WILL TAKE A TOKE ON THE TUBING AND GET

27 THEIR MARIJUANA SMOKE THROUGH THE TUBING.  
28 ON THE OCCASIONS WHEN SHE WAS USING THE BHONG  
JUDITH ANN OSSA, CSR NO. 2310

0886

1 WITH OTHER PEOPLE, SHE SAID SHE WOULD ONLY HAVE ONE HIT ON  
2 THE BHONG PER EPISODE OF SMOKING MARIJUANA.  
3 Q. OKAY. AND WHEN SHE WAS TALKING ABOUT WITH THE  
4 JOINT AND SMOKING WITH OTHER PEOPLE, SHE SAID LESS THAN  
5 THREE, AS PRESUMABLY --  
6 A. NO MORE THAN THREE.  
7 Q. NO MORE THAN THREE, AS PRESUMABLY SHE PASSED IT  
8 AROUND TO OTHER PEOPLE?  
9 A. EXACTLY.  
10 Q. WHAT OTHER ASSUMPTIONS DID YOU MAKE?  
11 A. WELL, OVER TIME, SHE INDICATED THAT HER MARIJUANA  
12 SMOKING BECAME LESS FREQUENT. AND THAT WASN'T DEFINED, BUT  
13 SHE INDICATED THAT SHE NEVER SMOKED MORE THAN WEEKLY AT THE  
14 BEGINNING OR DURING THE HEAVIEST PERIODS OF HER MARIJUANA  
15 SMOKING.  
16 SO THEN I HAD TO MAKE AN ASSUMPTION. OKAY. IF  
17 IT WAS LESS THAN WEEKLY AT HER HEAVIER PERIOD, WHICH I  
18 ASSUMED WAS ONCE EVERY TWO WEEKS, THEN WHAT WAS IT WHEN IT  
19 BECAME EVEN MORE INFREQUENT?  
20 AND SO I MADE ASSUMPTIONS AS WE MOVED THROUGH THE  
21 YEARS, WHEN SHE SAID, WELL, FOR THESE YEARS IT WAS LESS  
22 FREQUENT, AND THEN FOR THOSE YEARS IT WAS EVEN LESS  
23 FREQUENT. SO BASICALLY, I BACKED UP ON THE FREQUENCY, FIRST  
24 FROM EVERY OTHER WEEK TO THEN A PERIOD WHERE SHE INDICATED  
25 IT WAS LESS THAN A MONTH.  
26 SO SHE SAID LESS THAN A MONTH. THAT MEANS IT  
27 WASN'T 12 TIMES A YEAR. IT WAS SOMETHING LESS THAN 12 TIMES  
28 A YEAR. SO I CHOSE THE FREQUENCY EIGHT TIMES A YEAR. THAT

JUDITH ANN OSSA, CSR NO. 2310

0887

1 WAS ACTUALLY ONLY FOR ONE YEAR.  
2 SO THAT DIDN'T HAVE A BIG IMPACT ON THESE  
3 CALCULATIONS. BUT FOR THE ONE YEAR THAT SHE SAID LESS THAN  
4 ONCE A MONTH, THEN I ASSUMED IT WAS EIGHT TIMES THAT YEAR.  
5 AND THAT WAS ALSO A PERIOD OF TIME WHEN SHE USED  
6 IT, IT WAS PRIMARILY USING THE BHONG.  
7 THEN, THE YEAR OR SO AFTER THAT, SHE SAID IT  
8 DECLINED FROM THAT FREQUENCY.  
9 SO MY ASSUMPTION WAS DECLINING FROM EIGHT TIMES  
10 PER YEAR, WE'LL GO TO SIX TIMES A YEAR.  
11 DURING THAT PERIOD OF TIME, SHE WAS NOT USING THE  
12 BHONG. SHE DID NOT INDICATE THAT IT WAS THE BHONG.  
13 SO AT THAT POINT, I REVERTED BACK TO THE IDEA  
14 THAT SHE WAS USING MARIJUANA WITH OTHER PEOPLE. AND SO I  
15 WENT TO TWO PUFFS PER EPISODE AS OPPOSED TO ONE PER EPISODE  
16 WHEN SHE WAS USING THE BHONG.  
17 AND THEN FOR A NUMBER OF YEARS LATER, SHE  
18 INDICATED THAT HER FREQUENCY OF USE DECLINED FURTHER, AND SO  
19 I WENT TO SIX TIMES A YEAR.  
20 AND THEN, FOR ANOTHER PERIOD THAT FOLLOWED, SHE  
21 SAID VERY INFREQUENT AND OCCASIONAL. FOR THAT PERIOD, I  
22 MAINTAINED THE SIX TIMES PER YEAR FREQUENCY, BECAUSE THERE  
23 WAS NO SPECIFIC MENTION OF DECLINING FREQUENCY.  
24 AND THEN FOR THE LAST FIVE YEARS OR SO, HER  
25 RECOLLECTION WAS THAT HER MARIJUANA USE WAS VERY INFREQUENT  
26 AND SHE COULDN'T EVEN PROVIDE A MEANINGFUL ESTIMATE OF HER  
27 MARIJUANA SMOKING, THE FREQUENCY OF HER MARIJUANA SMOKING.  
28 THAT SUGGESTED TO ME THAT SHE BACKED EVEN FURTHER

JUDITH ANN OSSA, CSR NO. 2310

0888

1 FROM HER MARIJUANA SMOKING. AND SO INSTEAD OF THE SIX TIMES  
2 PER YEAR FOR THOSE PRECEDING YEARS, I PICKED FOUR TIMES PER  
3 YEAR.

4 SO THAT'S HOW I PUT ALL THIS TOGETHER, DOING THE  
5 BEST I COULD WITH THE INFORMATION THAT SHE PROVIDED.

6 Q. OKAY. AND YOU REVIEWED HER DEPOSITION TESTIMONY?

7 A. YES.

8 Q. AND IN HER DEPOSITION TESTIMONY, THE DEFENDANTS  
9 HAD AN OPPORTUNITY TO CROSS-EXAMINE HER?

10 A. YES.

11 Q. AND DID YOU SEE ANY QUESTIONS POSED TO HER --

12 MS. MASON: OBJECTION, YOUR HONOR.

13 MS. CHABER: Q. -- ABOUT HER MARIJUANA USE?

14 THE COURT: SUSTAINED. IT'S IRRELEVANT.

15 MS. CHABER: Q. SO TAKING ALL OF THAT INTO  
16 ACCOUNT, THE INFORMATION THAT YOU HAD AND THE ASSUMPTIONS  
17 THAT YOU MADE, WHAT DID YOU CONCLUDE ABOUT THE NUMBER OF  
18 MARIJUANA PUFFS THAT LESLIE WHITELEY CONSUMED OVER HER  
19 LIFETIME?

20 A. WHAT KIND OF CALCULATIONS DID I COME UP WITH; IS  
21 THAT YOUR QUESTION?

22 Q. YES. GOSH, IT ALWAYS SOUNDS BETTER WHEN YOU ASK  
23 IT.

24 YES. WHAT KIND OF CALCULATIONS DID YOU COME UP  
25 WITH?

26 A. WELL, I JUST WANT TO MAKE SURE I'M UNDERSTANDING  
27 YOUR QUESTION.

28 WELL, WHAT I CAME UP WITH GOING THROUGH THOSE  
JUDITH ANN OSSA, CSR NO. 2310

0889

1 CALCULATIONS BASED ON THOSE ASSUMPTIONS WAS THAT, BY THE END  
2 OF HER 12 OR 13-YEAR PERIOD OF MARIJUANA SMOKING FROM ABOUT  
3 1973 TO ABOUT 1986, SHE HAD TAKEN ABOUT 252 PUFFS OF  
4 MARIJUANA SMOKE.

5 WHAT YOU SEE HERE ARE DOTS REPRESENTING HER  
6 CUMULATIVE PUFFS OF MARIJUANA SMOKE OVER TIME (INDICATING),  
7 AND THE LEVEL IS SO LOW THAT YOU CAN'T EVEN SEE THAT IT'S  
8 ABOVE THE LINE FOR ZERO. AND THAT'S BECAUSE THIS SCALE  
9 APPEARS AS IT IS BECAUSE SHE HAS TAKEN IN SO MUCH CIGARETTE  
10 SMOKE AND THE PUFFS ARE IN THE MILLIONS.

11 AND WHEN YOU PUT A GRAPH TOGETHER LIKE THAT,  
12 WHERE SOMEBODY HAS TAKEN A FEW MILLION PUFFS OF CIGARETTE  
13 SMOKE BUT A FEW HUNDRED PUFFS OF MARIJUANA SMOKE, THIS LINE  
14 IS HARDLY GOING TO BE NOTICEABLY ABOVE ZERO (INDICATING).

15 AND THAT'S WHAT YOU SEE HERE. IT LOOKS LIKE  
16 THESE DOTS, THESE DATA POINTS OR THE LINE THAT CONNECTS THEM  
17 ARE RIGHT ON TOP OF THIS HORIZONTAL AXIS FOR ZERO, BUT IN  
18 FACT, IT'S INCHING UPWARD FROM ZERO HERE TO 252 IN 1986.

19 Q. JUST SO WE UNDERSTAND, THE FIRST LINE ACROSS  
20 PAST -- THE FIRST LINE ACROSS IS THE ZERO AXIS?

21 A. CORRECT.

22 Q. AND THE NEXT LINE UP IS HOW MANY PUFFS?

23 A. 250,000.

24 Q. SO IN ORDER TO DEMONSTRATE THIS MARIJUANA PUFF,  
25 YOU WOULD HAVE TO HAVE DIVIDED UP THAT 250,000 SO THAT IT  
26 COULD BE DISPLAYED ON A CHART?

27 A. CORRECT. IF YOU WANTED ME TO REDRAW THE CHART SO  
28 YOU COULD ACTUALLY SEE THIS MARIJUANA LINE ABOVE ZERO, WE'D

JUDITH ANN OSSA, CSR NO. 2310

0890

1 PROBABLY HAVE TO RUN THIS CHART UP ONE OR TWO STORIES. I  
2 DON'T KNOW HOW MANY STORIES THERE ARE IN THIS BUILDING.

3 Q. WE ARE ON FIVE, SO WE'RE PRETTY CLOSE TO THE  
4 TOP.

5 A. WE'D PROBABLY HAVE TO GO UP TO THE ROOF, EXPAND  
6 THIS THING UP TO THE ROOF. AND THEN ON THE ROOF, YOU WOULD  
7 SEE THE 2.4 MILLION CIGARETTE PUFFS THAT WOULD BE UP ON THE  
8 ROOF.

9 AND THEN MAYBE THIS PIECE WOULD BE EXPANDED SO IT  
10 TOOK UP ALL OF THIS SCREEN (INDICATING), AND THEN YOU'D SEE  
11 THAT THIS LINE WAS A BIT ABOVE THE LINE FOR ZERO.

12 Q. AND IF YOU TOOK THE SORT OF MIDDLE GROUND OR  
13 AVERAGE OF WHAT SHE SAID, IF YOU TOOK, YOU KNOW, THREE  
14 RATHER THAN A TWO FOR THE NUMBER OF PUFFS THAT SHE TOOK, OR  
15 TWO HITS ON A BHONG INSTEAD OF ONE, WOULD THAT HAVE CHANGED  
16 THIS SIGNIFICANTLY?

17 A. NO. I MEAN, IN FACT, THAT'S SEEN IN THE OTHER  
18 CHART THAT WE PREPARED.

19 Q. NOW, DID YOU MAKE A SECOND CHART, DOCTOR, WHICH  
20 IS 1815?

21 A. YES.  
22 I WOULD SHOW IT TO THE JURY FOR DEMONSTRATIVE  
23 PURPOSES AT THIS TIME.

24 THE COURT: ANY OBJECTION?  
25 MS. MASON: NO OBJECTION, YOUR HONOR.

26 THE COURT: YOU MAY SHOW THAT.  
27 MS. CHABER: Q. THIS IS 1815. AND AT THE  
28 BOTTOM LEFT-HAND SIDE, IT'S A LITTLE HARD TO SEE, BUT IT  
JUDITH ANN OSSA, CSR NO. 2310

0891

1 SAYS "4X." I WILL ASK YOU IN A FEW MINUTES WHAT THAT  
2 RELATES TO.

3 LET ME JUST ASK YOU THIS, DOCTOR: DID YOU  
4 PREPARE THE TOBACCO CIGARETTE PUFFS IN A SIMILAR FASHION TO  
5 WHAT YOU JUST DESCRIBED FOR CHART 1814?

6 A. YES. IT'S IDENTICAL.

7 Q. OKAY.

8 A. THE LINE FOR TOBACCO CIGARETTE PUFFS, IS IT  
9 IDENTICAL TO THE LINE THAT WE SAW ON THE PREVIOUS CHART?

10 Q. AND THE LINE. DID YOU PREPARE THE INFORMATION  
11 WITH RESPECT TO MARIJUANA PUFFS THE SAME WAY YOU PREPARED IT  
12 IN THE LAST CHART, 1814?

13 A. NO.

14 Q. AND CAN YOU TELL US WHAT YOU DID DIFFERENTLY FOR  
15 THIS CHART?

16 A. YES. FOR THIS CHART, I TOOK EVERY VALUE FOR  
17 MARIJUANA PUFFS AND MULTIPLIED THEM BY FOUR.

18 Q. WHY DID YOU PICK FOUR?

19 A. I PICKED FOUR, BECAUSE THERE IS ONE STUDY THAT  
20 WAS PERFORMED BY DR. TASHKIN AND COLLEAGUES WHICH WAS  
21 PUBLISHED IN A JOURNAL AND WHICH INDICATED THAT MARIJUANA  
22 SMOKE DEPOSITS FOUR TIMES AS MUCH TAR IN THE LUNGS OF A  
23 MARIJUANA SMOKER AS COMPARED TO A CIGARETTE SMOKER.

24 IN OTHER WORDS, IF YOU LOOK AT HOW MUCH TAR GOES  
25 INTO THE LUNGS OF A MARIJUANA SMOKER VERSUS HOW MUCH TAR  
26 GOES INTO THE LUNGS OF A CIGARETTE SMOKER, THEIR STUDY  
27 SHOWED THAT FOUR TIMES AS MUCH TAR WENT INTO THE LUNGS FROM  
28 THE MARIJUANA SMOKING AS COMPARED TO THE CIGARETTE SMOKING.

JUDITH ANN OSSA, CSR NO. 2310

0892

1 SO I TOOK THAT FACTOR OF FOUR AND SAID "OKAY.  
2 EVEN IF WE SAY THAT A MARIJUANA PUFF IS FOUR TIMES MORE  
3 TOXIC THAN A CIGARETTE PUFF, WHAT WOULD HAPPEN TO THIS GRAPH  
4 IF WE TOOK THAT INTO ACCOUNT?"

5 WE CAN'T TAKE THAT INTO ACCOUNT BY SIMPLY SAYING,

6 "WE ARE GOING TO SAY THAT ONE MARIJUANA PUFF IS EQUIVALENT  
7 TO FOUR CIGARETTE PUFFS. SO LET'S JUST MULTIPLY IT BY FOUR  
8 SO WE CAN COMPARE LIKE TO LIKE."  
9 AND YOU COULD CALL THESE PUFF EQUIVALENTS. WHEN  
10 YOU MULTIPLY BY FOUR INSTEAD OF 252, WHICH I GOT THE FIRST  
11 TIME, YOU MULTIPLY THAT BY FOUR, IT'S 1,008.  
12 SO WE WOULDN'T SAY THAT LESLIE WHITELEY HAD 1,008  
13 PUFFS OF MARIJUANA SMOKE, BUT YOU COULD CALL THEM MARIJUANA  
14 SMOKE PUFF EQUIVALENTS BECAUSE WE MULTIPLIED BY FOUR.  
15 Q. AND HOW DID THAT AFFECT THE CHART THAT YOU  
16 PREPARED?  
17 A. WELL, AGAIN, WHEN YOU WANT TO PUT IT ALL ON ONE  
18 SCREEN AND COMPARE CIGARETTES TO MARIJUANA, WHICH I THINK IS  
19 THE POINT HERE, THERE IS NO PERCEIVABLE DIFFERENCE TO YOUR  
20 CHART. IT LOOKS LIKE THESE LINES ARE IDENTICAL, THIS LINE  
21 HERE COMPARED TO THE MARIJUANA LINE ON THE PREVIOUS CHART  
22 (INDICATING). THEY LOOK LIKE THEY'RE THE SAME.  
23 BUT, IN FACT, THIS LAST DOT, THIS LAST DATA  
24 POINT, INSTEAD OF BEING AT 252, IT'S AT 1,008. SO IT MIGHT  
25 BE A LITTLE BIT HIGHER, BUT YOU CAN'T TELL THAT BECAUSE OF  
26 THE CHART BEING DRAWN THE WAY IT IS, TO ALLOW US TO GET ALL  
27 THE CIGARETTE INFORMATION ON THE CHART.  
28 AGAIN, IF WE REDID IT SO THAT THE CIGARETTE  
JUDITH ANN OSSA, CSR NO. 2310

0893

1 INFORMATION WENT UP TO THE ROOF, AND THEN WE PUT BOTH  
2 MARIJUANA LINES ON THAT CHART, YOU'D SEE ONE THAT WOULD GO  
3 LIKE THIS AND ONE THAT WOULD GO LIKE THAT (INDICATING).  
4 BUT I THINK THE POINT IS, EVEN WHEN WE ADJUST THE  
5 MARIJUANA PUFFS FOR THIS ONE STUDY THAT I REFERRED TO, IT  
6 DOESN'T MAKE A DIFFERENCE, WHEN YOU COMPARE CIGARETTES TO  
7 MARIJUANA.  
8 Q. BY THE WAY, WHAT DID LESLIE WHITELEY START  
9 SMOKING FIRST, THE CIGARETTES OR THE MARIJUANA?  
10 MR. FURR: OBJECTION, YOUR HONOR. RELEVANCE.  
11 THE COURT: WE MAY NEED A SIDEBAR ON THAT.  
12 MS. CHABER: IT GOES TO THE LENGTH OF TIME --  
13 THE COURT: DON'T ARGUE.  
14 MS. CHABER: EXCUSE ME.  
15 THE COURT: YOU UNDERSTAND -- LET ME JUST TELL  
16 ALL THE LAWYERS THIS.  
17 I DON'T PERMIT LAWYERS TO ARGUE OBJECTIONS IN  
18 FRONT OF THE JURY. SO PLEASE DON'T DO THAT THROUGHOUT THE  
19 TRIAL.  
20 I'M GOING TO HAVE A VERY BRIEF SIDEBAR WITH YOU  
21 ON THIS.  
22 (COURT AND COUNSEL CONFER OUTSIDE  
23 THE PRESENCE OF THE JURY)  
24 THE COURT: OKAY. WE ARE BACK ON THE RECORD.  
25 YOU MAY PROCEED.  
26 MS. CHABER: Q. DR. DAVIS, RATHER THAN DRAG YOU  
27 DOWN HERE AGAIN, MAYBE I CAN POINT.  
28 THE SMOKING LINE BEGINS AT 1972 (INDICATING)?  
JUDITH ANN OSSA, CSR NO. 2310

0894

1 A. CORRECT.  
2 Q. AND IN THIS CHART, WHAT YEAR DOES THE MARIJUANA  
3 USE BEGIN?  
4 A. 1973.  
5 Q. OKAY. SO THAT WOULD BE HERE (INDICATING)?  
6 A. CORRECT.  
7 Q. I JUST WANT TO MAKE SURE THAT THE OTHER CHART --  
8 1814. OKAY.

9 NOW, ON 1814, THIS IS THE FIRST ONE, THE ONE  
10 TIMES ONE.  
11 THE CIGARETTE PUFFS START IN --  
12 A. 1972.  
13 Q. IS THERE A PLANT IN YOUR WAY?  
14 A. NO.  
15 Q. OKAY. 1972?  
16 A. CORRECT.  
17 Q. OKAY. WHAT YEAR DO YOU HAVE THE MARIJUANA  
18 STARTING?  
19 A. THAT LOOKS LIKE 1972 ON THAT CHART, BUT THAT  
20 WOULD HAVE BEEN A MISTAKE, I THINK.  
21 DIDN'T THE PREVIOUS ONE SHOW 1973?  
22 Q. CORRECT.  
23 WAS YOUR INTENTION TO SHOW TWO DIFFERENT THINGS  
24 ON THESE CHARTS?  
25 A. NO.  
26 Q. WAS YOUR INTENTION TO HAVE THEM BE IDENTICAL?  
27 A. THEY SHOULD HAVE BEEN IDENTICAL.  
28 Q. OKAY.

JUDITH ANN OSSA, CSR NO. 2310

0895

1 A. I WAS TRYING TO STRAIN MY EYES AND SEE. YES,  
2 THAT WOULD HAVE BEEN A MISTAKE.  
3 Q. WHEN YOU LOOKED AT THE CHART, I TAKE IT YOU  
4 DIDN'T PICK UP THAT MISTAKE?  
5 A. I DIDN'T NOTICE THAT.  
6 Q. OKAY.  
7 A. MY APOLOGIES.  
8 Q. AND IN TERMS OF DURATION OF SMOKING CIGARETTES  
9 VERSUS DURATION OF SMOKING MARIJUANA, CAN YOU GIVE US AN  
10 IDEA WHAT THE DIFFERENCE IS IN THE DURATION?  
11 A. YES. THE DURATION FOR CIGARETTE SMOKING FOR  
12 MS. WHITELEY WAS ON THE ORDER OF 26, 27 YEARS. THE DURATION  
13 FOR HER MARIJUANA SMOKING WAS ABOUT 13 YEARS.  
14 Q. AND BY THE WAY, YOU HAD MENTIONED AN ARTICLE BY  
15 DR. TASHKIN AND OTHERS FROM WHICH YOU TOOK THE ASSUMPTION OF  
16 THE FOUR TIMES -- FOR THE SECOND CHART, 1815, FOUR TIMES TAR  
17 DEPOSITION OF MARIJUANA PUFFS TO CIGARETTE PUFFS.  
18 DID I SAY THAT CORRECTLY?  
19 A. CORRECT.  
20 Q. DID THAT ARTICLE CONCLUDE IN ANY WAY THAT  
21 MARIJUANA CAUSES LUNG CANCER?  
22 A. NO.  
23 MR. FURR: OBJECTION. HEARSAY.  
24 THE COURT: WHAT?  
25 MR. FURR: HEARSAY.  
26 THE COURT: SUSTAINED. AND I'LL STRIKE THE  
27 ANSWER.  
28 MS. CHABER: Q. WERE YOU AWARE --  
JUDITH ANN OSSA, CSR NO. 2310

0896

1 THE COURT: LET ME JUST REMIND THE JURY, WHEN I  
2 STRIKE AN ANSWER, THAT MEANS YOU DISREGARD THE ANSWER. THE  
3 ANSWER SHOULDN'T HAVE BEEN GIVEN.  
4 THE OBJECTION WAS SUSTAINED. YOU MUST DISREGARD  
5 THE ANSWER.  
6 MS. CHABER: Q. ARE YOU AWARE OF ANY  
7 SCIENTIFIC MEDICAL LITERATURE, PEER REVIEW LITERATURE, AS WE  
8 TALKED ABOUT PEER REVIEW YESTERDAY, THAT CONCLUDES THAT  
9 CIGARETTES -- EXCUSE ME -- MARIJUANA CAUSES LUNG CANCER?  
10 A. NO.  
11 Q. DOCTOR, FOR WOMEN, CAN YOU TELL US WHAT THE

12 NO. 1 SITE -- THE NO. 1 SITE IS FOR CANCER DEATHS IN WOMEN?  
13 A. YES.  
14 Q. WHAT IS THAT?  
15 A. LUNG CANCER. LUNG CANCER IS THE NO. 1 CAUSE OF  
16 CANCER DEATH IN WOMEN. IT OVERTOOK BREAST CANCER TO ACHIEVE  
17 THAT DUBIOUS DISTINCTION IN THE MID-1980S.  
18 SO FOR THE PAST 15 YEARS OR SO, LUNG CANCER HAS  
19 BEEN THE NO. 1 CAUSE OF CANCER DEATH IN WOMEN IN THE UNITED  
20 STATES.  
21 Q. NOW, YESTERDAY AND TODAY, I'VE ASKED YOU  
22 QUESTIONS ABOUT WHETHER CIGARETTE SMOKING CAUSES LUNG  
23 CANCER, WHETHER MARIJUANA CAUSES LUNG CANCER.  
24 HAVE YOU HAD ANY DIFFICULTY WITH THE WORD  
25 "CAUSE"?  
26 A. I HAVEN'T, NO.  
27 Q. AND DO YOU HAVE ANY DIFFICULTY, AS A SCIENTIST,  
28 AS A MEDICAL DOCTOR IN PREVENTIVE MEDICINE, AS A DOCTOR  
JUDITH ANN OSSA, CSR NO. 2310

0897

1 SPECIALIZING IN RESEARCH AND WORK WITH TOBACCO, ON THE USE  
2 OF THE WORD "CAUSE" WHEN IT RELATES TO CIGARETTE SMOKING AND  
3 LUNG CANCER?  
4 A. I DON'T HAVE ANY PROBLEM AT ALL. IT'S ENTIRELY  
5 APPROPRIATE TO USE THAT TERM.  
6 Q. AND HAVE YOU HAD SOME INVOLVEMENT IN THE AMERICAN  
7 MEDICAL ASSOCIATION?  
8 A. YES.  
9 Q. CAN YOU EXPLAIN THAT TO US.  
10 A. SURE. I'VE BEEN INVOLVED IN THE AMA OR THE  
11 AMERICAN MEDICAL ASSOCIATION SINCE I WAS A SECOND-YEAR  
12 MEDICAL STUDENT, SO FOR ABOUT 20 YEARS.  
13 AND BEGINNING WITH INVOLVEMENT IN THEIR MEDICAL  
14 STUDENT SECTION, AND THEN THEIR RESIDENT SECTION.  
15 RESIDENT PHYSICIANS ARE -- IF I DIDN'T EXPLAIN  
16 THIS YESTERDAY -- THEY'RE THE PHYSICIANS WHO ARE IN TRAINING  
17 RIGHT AFTER GRADUATING FROM MEDICAL SCHOOL, WHEN THEY GO  
18 THROUGH THEIR SPECIALTY TRAINING.  
19 Q. AND THAT'S WHERE YOU HAD DONE THAT AT MICHAEL  
20 REESE?  
21 A. MICHAEL REESE HOSPITAL FOR ONE YEAR. THEN AT THE  
22 CDC FOR A FEW MORE YEARS.  
23 THE AMA HAS A SPECIAL SECTION FOR MEDICAL  
24 STUDENTS. THE AMA HAS A SPECIAL SECTION FOR RESIDENT  
25 PHYSICIANS. SO I WAS INVOLVED, VERY MUCH SO, IN THOSE PARTS  
26 OF THE AMA.  
27 AND THEN AFTER FINISHING MY TRAINING, I CONTINUED  
28 MY INVOLVEMENT. MOST NOTABLY, I GUESS, IN RESPONSE TO YOUR  
JUDITH ANN OSSA, CSR NO. 2310

0898

1 QUESTION, IF I FOCUS ON MY LEADERSHIP ACTIVITIES IN THE AMA,  
2 I WAS THE CHAIR OF THE MEDICAL STUDENT SECTION BEFORE I  
3 GRADUATED FROM MEDICAL SCHOOL, WHICH AT THE TIME INCLUDED  
4 ABOUT 30,000 MEDICAL STUDENTS WHO ARE MEMBERS OF THE AMA.  
5 WHEN I MOVED INTO THE RESIDENT SECTION OF THE  
6 AMA, I WAS ELECTED TO THE AMA BOARD OF TRUSTEES. THAT'S THE  
7 HIGHEST BODY WITHIN THE AMA, ABOUT 16, 18 PEOPLE WHO RUN THE  
8 ORGANIZATION.  
9 AND AT THAT TIME, WHEN I WAS A RESIDENT, THEY  
10 CREATED A SPECIAL SEAT ON THE BOARD FOR A STUDENT AND A  
11 SPECIAL SEAT ON THE BOARD FOR A RESIDENT PHYSICIAN. SO I  
12 WAS ELECTED TO THE FIRST RESIDENT SEAT ON THE BOARD.  
13 THE ELECTION WAS BY THE HOUSE OF DELEGATES, WHICH  
14 IS A BODY THAT INCLUDES 450 PHYSICIANS FROM ACROSS THE

15 COUNTRY. SO I WAS ON THE AMA BOARD OF TRUSTEES FOR THE  
16 THREE YEARS IN THE MID-1980'S AS A RESIDENT PHYSICIAN.  
17 AND THEN, AFTER I FINISHED MY TRAINING AND AFTER  
18 I LEFT THE AMA BOARD OF TRUSTEES, I REPRESENTED MY SPECIALTY  
19 SOCIETY IN THE AMA.  
20 Q. AND THAT'S PREVENTIVE MEDICINE?  
21 A. CORRECT. THE ORGANIZATION IS CALLED THE AMERICAN  
22 COLLEGE OF PREVENTIVE MEDICINE, AND IT HAS A SEAT IN THE AMA  
23 HOUSE OF DELEGATES, JUST LIKE ALL THE MAJOR SPECIALTIES DO.  
24 SO I REPRESENTED MY SPECIALTY SOCIETY ALONG WITH  
25 A FEW OTHERS IN THE AMA HOUSE OF DELEGATES.  
26 AND WHILE I WAS SERVING IN THAT CAPACITY, I WAS  
27 ELECTED TO THE AMA COUNCIL ON SCIENTIFIC AFFAIRS, WHICH IS A  
28 COMMITTEE OF 12 PEOPLE WHO HANDLE ALL OF THE AMA'S OR MOST

JUDITH ANN OSSA, CSR NO. 2310

0899

1 OF THE AMA'S ISSUES RELATING TO SCIENCE AND PUBLIC HEALTH.  
2 I WAS ON THAT COUNCIL FOR SIX YEARS, ON THE  
3 COUNCIL ON SCIENTIFIC AFFAIRS. AND BEFORE I LEFT, I SERVED  
4 AS CHAIR OF THE COUNCIL FOR ONE YEAR, CHAIR OF THAT  
5 COMMITTEE, SELECTED BY THE OTHER MEMBERS OF THE COMMITTEE.  
6 Q. AND IN THE COURSE OF ALL OF THIS TIME THAT YOU'VE  
7 SPENT, AS YOU'VE JUST DESCRIBED, IN THE VARIOUS COMMITTEES  
8 AND POSITIONS AND LEADERSHIP POSITIONS, HAVE YOU HAD THE  
9 OPPORTUNITY TO INTERACT WITH OTHER QUALIFIED AND REPUTABLE  
10 SCIENTISTS AND DOCTORS ACROSS THIS COUNTRY?  
11 A. ABSOLUTELY. THIS IS PROBABLY ONE OF THE MOST  
12 INTELLECTUALLY STIMULATING ORGANIZATIONS. AND THE MEETINGS  
13 THAT THEY HOLD WHERE, OVER A COURSE OF FIVE OR SIX DAYS,  
14 TOPICS ARE DISCUSSED AND DEBATED AND LECTURES ARE GIVEN,  
15 EXPERTS ARE BROUGHT IN TO PROVIDE INFORMATION, COMMITTEE  
16 MEETINGS ARE HELD, RESOLUTIONS AND REPORTS ARE INTRODUCED  
17 AND DEBATE AND TESTIMONY IS PROVIDED.  
18 SO IT'S A VERY RICH AND STIMULATING EXPERIENCE  
19 WITH ALL OF THE DIFFERENT SPECIALTIES IN MEDICINE  
20 REPRESENTED, AND WITH SOME OF THE SHARPEST PEOPLE FROM  
21 ACROSS THE COUNTRY GATHERING TO DISCUSS THE IMPORTANT ISSUES  
22 IN MEDICINE AND IN HEALTH CARE.  
23 Q. SINCE THE TIME THAT YOU BEGAN IN YOUR VARIOUS  
24 POSITIONS WITH THE AMA, AS YOU'VE DESCRIBED, ARE YOU AWARE  
25 OF ANY REPUTABLE SCIENTIFIC OR MEDICAL AUTHORITIES WHO HAVE  
26 NOT FOUND THAT CIGARETTE SMOKING IS A CAUSE OF LUNG CANCER?  
27 A. NO.  
28 Q. I DON'T WANT TO LOSE THE EXHIBITS HERE. 1814 HAS

JUDITH ANN OSSA, CSR NO. 2310

0900

1 MYSTERIOUSLY VANISHED. I WILL FIND IT.  
2 DR. DAVIS, IN THE TIME THAT YOU'VE SPENT IN YOUR  
3 PROFESSIONAL LIFE STUDYING, WORKING AND RESEARCHING, TRYING  
4 TO HELP FOSTER WAYS TO PREVENT DISEASES CAUSED BY SMOKING,  
5 AS YOU DESCRIBED PRETTY MUCH YESTERDAY AND SOMEWHAT TODAY,  
6 HAVE YOU BECOME INVOLVED AT ALL IN THE ISSUE OF THE  
7 AWARENESS OF THE PUBLIC OF THE RISKS AND THE MAGNITUDE OF  
8 THE RISKS OF CIGARETTE SMOKING?  
9 A. YES.  
10 Q. AND CAN YOU TELL US A LITTLE BIT ABOUT YOUR  
11 INVOLVEMENT.  
12 A. I MIGHT HAVE MENTIONED VERY BRIEFLY YESTERDAY  
13 THAT WHEN WE PUT TOGETHER THAT SILVER ANNIVERSARY SURGEON  
14 GENERAL'S REPORT IN 1989, THERE WAS A HUGE SECTION IN  
15 CHAPTER 4 WHICH REVIEWED ALL OF THE SURVEY INFORMATION WE  
16 COULD FIND OVER THE PAST 25 YEARS ABOUT PUBLIC AWARENESS OF  
17 THE HEALTH HAZARDS OF SMOKING.



18 WE LOOKED AT STATISTICS, FOR EXAMPLE, ON WHETHER  
19 THE PUBLIC IS AWARE THAT SMOKING IS HARMFUL TO HEALTH,  
20 WHETHER THEY THINK THAT IT CAUSES LUNG CANCER, WHETHER THEY  
21 THINK IT CAUSES OTHER CANCERS, WHETHER THEY THINK IT CAUSES  
22 HEART DISEASE, EMPHYSEMA, DAMAGE TO THE FETUS WHEN PREGNANT  
23 WOMEN SMOKE, ALL OF THOSE KINDS OF THINGS. WHAT DO THEY  
24 THINK ABOUT LOW-TAR CIGARETTES? ARE THEY AWARE THAT CARBON  
25 MONOXIDE, A POISONOUS GAS, IS IN TOBACCO SMOKE?

26 ALL THOSE KINDS OF QUESTIONS THAT HAVE BEEN ASKED  
27 IN SURVEYS, WE TRIED TO FIND THE RESULTS FROM, AND THEN WE  
28 SUMMARIZED THEM IN 10 OR 15 TABLES IN THAT CHAPTER.

JUDITH ANN OSSA, CSR NO. 2310

0901

1 Q. AND THAT WAS CHAPTER 4 OF THE 1989 REPORT OF THE  
2 SURGEON GENERAL?

3 A. CORRECT.

4 Q. AND THIS REPORT, WAS IT PREPARED IN THE SAME  
5 MANNER THAT YOU DESCRIBED ALL OF THE SURGEON GENERAL REPORTS  
6 BEING PREPARED?

7 A. YES.

8 Q. AND WAS IT PREPARED SUBJECT TO A LAW AND A  
9 REQUIREMENT THAT IT BE PREPARED?

10 A. YES.

11 Q. AND WAS IT PREPARED DURING THE COURSE OF THE TIME  
12 THAT THE WORK WAS BEING DONE ON SHORTLY THEREAFTER?

13 A. YES. AS I MENTIONED, IT REVIEWED 25 YEARS OR SO  
14 OF SURVEY DATA, BUT WE WANTED TO MAKE SURE IT WAS AS CURRENT  
15 AS POSSIBLE, SO WE INCLUDED THE MOST RECENT SURVEYS WE COULD  
16 FIND.

17 Q. AND WERE YOU YOURSELF INVOLVED IN REVIEWING  
18 CHAPTER 14 AND WORKING ON CHAPTER 14?

19 A. FOUR.

20 Q. FOUR. EXCUSE ME.

21 A. YES. I WAS INVOLVED IN WORKING WITH THE AUTHOR  
22 WHO PREPARED THAT CHAPTER. I COLLECTED A LOT OF THE SURVEYS  
23 MYSELF. I HAD THEM IN MY FILES. I SHARED THEM WITH THE  
24 AUTHOR.

25 I, ALONG WITH OTHERS, REVIEWED THE WORK THAT WE  
26 PREPARED. WE SENT IT OUT FOR PEER REVIEW, ALL THOSE OTHER  
27 STEPS THAT I MENTIONED BEFORE.

28 SO YES, I WAS INVOLVED QUITE A BIT IN THAT PART  
JUDITH ANN OSSA, CSR NO. 2310

0902

1 OF THE REPORT.

2 Q. NOW, HAVE YOU FORMED OPINIONS WITH RESPECT TO HOW  
3 WELL INFORMED THE PUBLIC IS ON CERTAIN OF THE MATTERS THAT  
4 YOU'VE JUST TALKED ABOUT, LUNG CANCER, LOW BIRTH WEIGHT AND  
5 SO FORTH?

6 A. YES.

7 MR. FURR: EXCUSE ME, DOCTOR. OBJECTION.  
8 RELEVANCE, BASED ON THE IN LIMINE RULINGS.

9 THE COURT: I'M GOING TO GIVE THE JURY THE  
10 MORNING RECESS ANYWAY. LET'S TALK FOR A COUPLE OF MINUTES.

11 JURORS, LET ME GIVE YOU A RECESS FROM 11:00 TO  
12 11:15.

13 PLEASE CONTINUE TO FOLLOW THE ADMONITION. WE'LL  
14 SEE YOU BACK AT 11:15.

15 (RECESS TAKEN FROM 10:48 TO 11:35 A.M.)

16 THE COURT: WE ARE BACK ON THE RECORD. WE ARE A  
17 LITTLE LATE, BECAUSE I WAS SPENDING A LITTLE TIME WITH THE  
18 LAWYERS DURING THE RECESS. I HAD TO GIVE THEM A LITTLE  
19 RECESS AT THE END OF MY MEETING WITH THEM, SO THAT'S WHY  
20 WE'RE A LITTLE LATE.

21 WE ARE READY TO GO NOW.  
22 MS. CHABER: Q. DR. DAVIS, WE WERE TALKING  
23 BEFORE THE BREAK ABOUT THE WORK THAT WAS DONE IN THE 1989  
24 SURGEON GENERAL'S REPORT WITH RESPECT TO PUBLIC AWARENESS OF  
25 THE HEALTH RISKS OF CIGARETTE SMOKING.  
26 AND I JUST WANT TO JUST ESTABLISH AGAIN, YOU DID  
27 DO WORK YOURSELF ON THAT CHAPTER IN TERMS OF REVIEWING AND  
28 BEING INVOLVED IN IT?

JUDITH ANN OSSA, CSR NO. 2310

0903

1 A. CORRECT.  
2 Q. AND THAT WAS CHAPTER 4 OF THE SURGEON GENERAL'S  
3 REPORT?  
4 A. CORRECT.  
5 Q. AND PREPARED IN ALL THE MANNERS THAT WE TALKED  
6 ABOUT EARLIER?  
7 A. YES.  
8 MS. CHABER: I WOULD OFFER THAT PORTION, YOUR  
9 HONOR, CHAPTER 4, INTO EVIDENCE.  
10 THE COURT: HAS IT BEEN MARKED FOR  
11 IDENTIFICATION YET?  
12 MS. CHABER: THE WHOLE BOOK HAS, YOUR HONOR, I  
13 THINK.  
14 THE COURT: I CAN'T SEPARATE IT OUT.  
15 YOU ARE GOING TO HAVE TO MARK THE PORTION THAT  
16 YOU'RE OFFERING, AND THEN WE'LL SEE IF THERE'S AN  
17 OBJECTION. BUT IT HASN'T EVEN BEEN MARKED.  
18 MS. CHABER: OKAY.  
19 THE COURT: ARE YOU PREPARED TO MARK IT? DO YOU  
20 HAVE IT SEPARATED OUT IN SOME WAY FROM THE REST OF THE  
21 BOOK?  
22 MS. CHABER: I WILL. IT'S BEING COPIED, YOUR  
23 HONOR. THE BOOK CAN'T BE TAKEN APART.  
24 THE COURT: LET ME FIND OUT.  
25 IT HASN'T BEEN MARKED. WE'RE GOING TO HAVE  
26 PROCEED IN AN ORDERLY WAY.  
27 IS THAT CHAPTER 4 YOU ARE OFFERING?  
28 MS. CHABER: CHAPTER 4.

JUDITH ANN OSSA, CSR NO. 2310

0904

1 MR. FURR: YOUR HONOR, THERE WILL BE AN  
2 OBJECTION. HEARSAY, FOR REASONS PREVIOUSLY STATED.  
3 THE COURT: I CAN'T RULE ON IT. I DON'T HAVE A  
4 COPY OF IT.  
5 YOU ARE GOING TO HAVE TO GET IT MARKED AND  
6 REOFFER IT LATER.  
7 MS. CHABER: YES. THAT'S FINE.  
8 Q. DR. DAVIS, CAN YOU TELL US, FIRST OF ALL, WHAT  
9 TIME PERIOD YOU WERE LOOKING AT WITH RESPECT TO PUBLIC  
10 AWARENESS OF THE HEALTH RISKS OF SMOKING?  
11 A. THE REPORT OVERALL LOOKED PRIMARILY AT THE PAST  
12 25 YEARS. THAT'S WHY WE CALLED IT THE SILVER ANNIVERSARY  
13 REPORT.  
14 BUT OCCASIONALLY, WHERE THERE WAS IMPORTANT  
15 INFORMATION FROM EARLIER YEARS, FOR EXAMPLE, THE 1950S, THEN  
16 THAT MIGHT HAVE BEEN INCLUDED.  
17 SO THE FOCUS WAS THE PAST QUARTER CENTURY, BUT  
18 SOMETIMES OLDER INFORMATION WAS ALSO INCLUDED.  
19 Q. OKAY. AND DURING THIS TIME PERIOD THAT WAS  
20 LOOKED AT, HAS THE PUBLIC AWARENESS WITH RESPECT TO HEALTH  
21 RISKS CHANGED OVER TIME?  
22 A. YES.  
23 Q. LET'S TALK ABOUT, IN YOUR OPINION, WHAT IS THE

24 PUBLIC AWARENESS OF HEALTH RISKS OF SMOKING AT THE PRESENT  
25 TIME?

26 A. THAT QUESTION IS A QUESTION THAT CAN BE  
27 COMPLICATED, AND IT CAN BE COMPLICATED BECAUSE THERE ARE  
28 DIFFERENT LEVELS OF PUBLIC AWARENESS.

JUDITH ANN OSSA, CSR NO. 2310

0905

1 Q. OKAY. MAYBE WE SHOULD START TALKING ABOUT THAT,  
2 AND YOU CAN EXPLAIN WHAT YOU MEAN BY "DIFFERENT LEVELS OF  
3 PUBLIC AWARENESS."

4 A. OKAY. MANY PEOPLE LOOK AT THIS WHOLE NOTION OF  
5 PUBLIC AWARENESS IN THREE LEVELS.

6 ONE WOULD BE THE LOWEST LEVEL OF AWARENESS, THE  
7 MOST BASIC. AND THAT IS: ARE THEY AWARE THAT THE SURGEON  
8 GENERAL HAS SAID THAT SMOKING IS HARMFUL TO HEALTH?

9 SO THEY WOULD BE AWARE THAT THERE IS AN AUTHORITY  
10 OUT THERE LIKE THE SURGEON GENERAL WHO HAS SAID THAT SMOKING  
11 IS DANGEROUS.

12 THE NEXT LEVEL WOULD BE AWARENESS THAT, INDEED,  
13 SMOKING IS HARMFUL TO HEALTH -- I HOPE THE DISTINCTION IS  
14 CLEAR -- AWARENESS THAT THE SURGEON GENERAL HAS MADE A  
15 STATEMENT ABOUT IT.

16 AND THEN THE NEXT LEVEL OF AWARENESS: ARE THEY  
17 AWARE THEMSELVES THAT SMOKING IS HARMFUL? NOT JUST THAT  
18 SOMEBODY HAS SAID IT'S HARMFUL, BUT ARE THEY AWARE THAT IT'S  
19 HARMFUL IN GENERAL?

20 AND THEN, THE THIRD LEVEL OF AWARENESS WOULD BE  
21 CALLED PERSONALIZED AWARENESS, WHERE, FOR AN INDIVIDUAL  
22 SMOKER, THE SMOKER WOULD SAY: "I'M AWARE THAT MY SMOKING IS  
23 HARMFUL TO ME."

24 IN OTHER WORDS, THEY WOULD KNOW IT'S NOT JUST  
25 HARMFUL IN GENERAL TO THOSE OTHER PEOPLE OUT THERE. "IT'S  
26 HARMFUL TO ME."

27 Q. OR THAT SOMEBODY HAD SAID IT?

28 A. CORRECT, WHICH WOULD BE THE FIRST LEVEL.

JUDITH ANN OSSA, CSR NO. 2310

0906

1 Q. OKAY.

2 A. SO THOSE ARE LEVELS WHICH I THINK HELP PEOPLE  
3 UNDERSTAND WHAT PUBLIC AWARENESS REALLY MEANS, BECAUSE THERE  
4 ARE DIFFERENT WAYS THAT YOU CAN DEFINE IT.

5 Q. OKAY.

6 A. SO I CAN THEN, WHEN YOU'RE READY, GO BACK TO YOUR  
7 FIRST QUESTION.

8 Q. WHAT I WAS GOING TO ASK IS CAN YOU -- IF YOU  
9 WOULDN'T MIND WRITING ON THE BOARD NEXT TO YOU. DO YOU NEED  
10 SOME PENS UP THERE?

11 A. YES.

12 IN MY BEST DOCTOR HANDWRITING?

13 Q. IN YOUR BEST TEACHING HANDWRITING.

14 AND MAYBE WE CAN TURN IT OR MOVE IT OUT SO THAT  
15 ALL THE JURORS CAN SEE, BECAUSE I THINK THEY MAY HAVE A  
16 DIFFICULT TIME FROM THERE.

17 I KNOW THE COURT WILL ASK THE JURY IF THEY HAVE  
18 ANY DIFFICULTY SEEING.

19 THE COURT: I HAVE MADE IT CLEAR TO THE JURY --  
20 AND I'LL JUST REPEAT IT -- IF ANYBODY AT ANY TIME DURING THE  
21 TRIAL CAN'T SEE SOMETHING THAT IS BEING SHOWN TO YOU BY  
22 ANYBODY, RAISE YOUR HAND AT THE VERY BEGINNING WHEN THAT  
23 OCCURS. LET US KNOW.

24 SO THAT IF I DON'T SEE ANY HANDS, I'M JUST GOING  
25 TO ASSUME YOU CAN ALL SEE EVERYTHING. THAT'S TRUE  
26 THROUGHOUT THE WHOLE TRIAL.

27 THE WITNESS: (WRITING ON BOARD)  
28 MS. CHABER: Q. THE FIRST LEVEL ONE WHERE IT  
JUDITH ANN OSSA, CSR NO. 2310

0907

1 SAYS "AWARENESS," THAT'S AWARENESS OF WHAT; THAT SOMEONE  
2 LIKE THE SURGEON GENERAL HAS SAID THAT?

3 A. RIGHT. I'LL JUST PUT "SURGEON GENERAL" HERE IN  
4 PARENTHESES TO REMIND PEOPLE THAT THAT'S WHAT THAT REFERS  
5 TO. AWARENESS THAT SOMEBODY, POSSIBLY SOMEBODY WITH  
6 AUTHORITY, HAS MADE A STATEMENT ABOUT WHETHER SMOKING IS  
7 HARMFUL TO HEALTH.

8 Q. OKAY. SO UNDERSTANDING THAT NOW WE'RE TALKING  
9 ABOUT THREE DIFFERENT LEVELS OF AWARENESS, I THINK MY  
10 QUESTION TO YOU, WHICH ASKED IT IN A MORE BROAD FASHION,  
11 WAS: WHAT IS THE PRESENT AWARENESS?

12 AND I ASSUME YOU WILL BE ABLE TO ANSWER THAT WITH  
13 RESPECT TO THE DIFFERENT LEVELS NOW THAT WE UNDERSTAND  
14 THEM?

15 A. YES.

16 Q. OKAY. CAN YOU DO THAT, PLEASE.

17 A. AND WE ARE TALKING ABOUT NOWADAYS?

18 Q. NOWADAYS.

19 A. I WOULD SAY THAT THERE IS A HIGH LEVEL OF  
20 AWARENESS IN THE PUBLIC THAT HEALTH AUTHORITIES HAVE SAID  
21 THAT SMOKING IS HARMFUL TO HEALTH.

22 SO LEVEL 1 AWARENESS, IF ONE COULD CALL IT THAT,  
23 WOULD BE HIGH, I WOULD MAINTAIN, IN THE UNITED STATES.

24 Q. ALL RIGHT.

25 IT MIGHT BE DIFFERENT IN OTHER PLACES?

26 A. ABSOLUTELY.

27 Q. AND THAT'S SOMETHING THAT WAS LOOKED AT IN A  
28 SUBSEQUENT SURGEON GENERAL'S REPORT?

JUDITH ANN OSSA, CSR NO. 2310

0908

1 A. THAT'S RIGHT. AND THERE MAY BE DIFFERENT DEGREES  
2 OF AWARENESS IN DIFFERENT SUBPOPULATIONS.

3 IN THE UNITED STATES, FOR EXAMPLE, YOUTH MAY HAVE  
4 A LOWER LEVEL OF UNDERSTANDING THAN ADULTS, OR A PARTICULAR  
5 RACIAL OR ETHNIC GROUP MIGHT HAVE A DIFFERENT LEVEL OF  
6 UNDERSTANDING THAN ANOTHER.

7 Q. THEN, IN FACT, HAS THAT YOUTH ISSUE WITH RESPECT  
8 TO AWARENESS BEEN LOOKED AT?

9 A. I'M NOT AWARE THAT IT'S BEEN LOOKED AT  
10 SPECIFICALLY IN REGARDS TO LEVEL 1.

11 Q. OKAY.

12 A. BUT IN GENERAL, YOUTH ARE LESS AWARE OF THE  
13 DANGERS OF SMOKING AND LESS LIKELY TO PERSONALIZE THAT RISK,  
14 WHICH GETS AT LEVEL 3, THAN ADULTS.

15 Q. OKAY. SO NOW, LET'S GO BACK TO LEVEL 2 AT THE  
16 PRESENT TIME.

17 A. THERE AGAIN WOULD BE A HIGH LEVEL OF PUBLIC  
18 AWARENESS THAT CIGARETTE SMOKING IS HARMFUL TO HEALTH.

19 BUT HERE AGAIN, WE NEED TO RECOGNIZE THAT THERE  
20 ARE DIFFERENT WAYS TO TALK ABOUT GENERAL AWARENESS. YOU CAN  
21 ASK PEOPLE ARE THEY AWARE THAT SMOKING IS HARMFUL TO  
22 HEALTH. BUT YOU CAN GO BEYOND THAT AND GET MORE SPECIFIC  
23 AND ASK THEM: "ARE YOU AWARE THAT SMOKING CAUSES LUNG  
24 CANCER OR IS A CAUSE OF LUNG CANCER OR HEART DISEASE OR  
25 EMPHYSEMA OR DAMAGE TO THE FETUS," ALL THOSE THINGS THAT I  
26 MENTIONED EARLIER.

27 OR "ARE YOU AWARE THAT A CERTAIN AMOUNT OF LUNG  
28 CANCER IS CAUSED BY SMOKING, SAY 80 PERCENT OR 90 PERCENT,

JUDITH ANN OSSA, CSR NO. 2310

0909

1 OR DO YOU JUST THINK THAT SMOKING PLAYS THE SAME ROLE IN  
2 CAUSING LUNG CANCER AS AIR POLLUTION?"

3 SO THERE ARE DIFFERENT WAYS TO LOOK AT GENERAL  
4 AWARENESS.

5 BUT IF YOU'RE TALKING ABOUT GENERAL AWARENESS  
6 THAT SMOKING IS HARMFUL TO HEALTH, THAT WOULD BE HIGH. THAT  
7 WOULD BE ABOUT 90 PERCENT.

8 IF YOU ASKED THE GENERAL PUBLIC: "ARE YOU AWARE  
9 OR DO YOU BELIEVE THAT SMOKING IS HARMFUL TO HEALTH," ABOUT  
10 90 PERCENT WOULD SAY "YES."

11 Q. AND THAT RUNS THE GAMUT FROM WHATEVER HARMS ARE  
12 IN THAT PERSON'S MIND WITH RESPECT TO SMOKING? IN OTHER  
13 WORDS, IF YOU DON'T BREAK IT DOWN AS YOU JUST DID, THAT WORD  
14 "HARMFUL" COULD HAVE DIFFERENT MEANINGS TO DIFFERENT  
15 PEOPLE?

16 A. ABSOLUTELY.

17 Q. AND SO IN THE GENERAL AWARENESS CATEGORY, LEVEL  
18 2, WHEN YOU START BREAKING IT DOWN TO SPECIFIC THINGS, LIKE  
19 CIGARETTE SMOKING BEING A CAUSE OF LUNG CANCER OR CIGARETTE  
20 SMOKING CAUSING HEART DISEASE, DO THE NUMBERS CHANGE AND  
21 VARY?

22 A. YES.

23 Q. AND CAN YOU EXPLAIN THAT.

24 A. I WOULD SAY THAT THE DISEASE THAT'S THE MOST  
25 WELL-RECOGNIZED AS BEING RELATED TO CIGARETTE SMOKING IS  
26 LUNG CANCER.

27 AND YOU MIGHT HAVE ALSO ABOUT 90 PERCENT OF  
28 PEOPLE SAYING "YES" TO THE QUESTION: "DOES CIGARETTE  
JUDITH ANN OSSA, CSR NO. 2310

0910

1 SMOKING CAUSE OR IS CIGARETTE SMOKING A CAUSE OF LUNG  
2 CANCER?" MAYBE 90 PERCENT WOULD SAY "YES" TO THAT.

3 BUT THE PERCENTAGE WOULD FALL THEN FOR OTHER  
4 DISEASES CAUSED BY SMOKING, LIKE HEART DISEASE, STROKE,  
5 EMPHYSEMA, BRONCHITIS, FETAL DAMAGE WHEN PREGNANT WOMEN  
6 SMOKE.

7 AND THEN IF YOU GET INTO SOME DISEASES, LIKE  
8 ULCER DISEASE, STOMACH ULCERS, WHICH I MENTIONED EARLIER,  
9 LEUKEMIA, SOME OF THE OTHER THINGS THAT ARE NOW KNOWN TO BE  
10 CAUSED BY SMOKING, THE GENERAL PUBLIC AWARENESS WOULD BE  
11 VERY LOW.

12 Q. AND HAS THAT GENERAL AWARENESS, SAY THAT  
13 CIGARETTE SMOKING IS A CAUSE OF LUNG CANCER, HAS THAT VARIED  
14 OVER TIME?

15 A. YES.

16 Q. AND CAN YOU EXPLAIN TO US HOW IT'S VARIED?

17 A. IT'S INCREASED OVER TIME. BACK IN THE 1950S,  
18 MAYBE ABOUT HALF OF THE GENERAL PUBLIC BELIEVED THAT  
19 CIGARETTE SMOKING IS A CAUSE OF LUNG CANCER.

20 Q. AND THAT IS THE QUESTION, A CAUSE; CORRECT?

21 A. CORRECT. BUT THAT PERCENTAGE INCREASED, SAY, TO  
22 ABOUT 90 PERCENT BY THE MID-1980'S.

23 Q. OKAY. AND THEN, WHAT ABOUT THE PERSONALIZED  
24 AWARENESS?

25 A. THAT'S WHERE PUBLIC AWARENESS IS MUCH LOWER. AND  
26 AGAIN, PERSONALIZED AWARENESS REFERS TO WHETHER SMOKERS WILL  
27 PERSONALIZE THE RISK TO THEM, WHETHER THEY THINK THAT THEIR  
28 SMOKING IS HARMFUL TO THEM.

JUDITH ANN OSSA, CSR NO. 2310

0911

1 AND IT GETS INTO THE ISSUE OF RATIONALIZATION, IF  
2 WE COULD TALK IN PSYCHIATRIC TERMS OR PSYCHOLOGICAL TERMS,

3 WHERE A LOT OF PEOPLE WILL TRY AND RATIONALIZE AWAY RISKS  
4 FROM THEIR OWN BEHAVIOR.

5 FOR EXAMPLE, THEY MAY BELIEVE THAT THEIR SMOKING  
6 IS NOT HARMFUL TO THEM BECAUSE OF HOW MANY CIGARETTES THEY  
7 SMOKE A DAY. THEY MAY THINK IF THEY ONLY SMOKE FIVE  
8 CIGARETTES A DAY, THAT IT'S NOT HARMFUL, ALTHOUGH ALL THOSE  
9 OTHER SMOKERS WHO SMOKE MORE, IT IS HARMFUL TO THEM.

10 THEY MAY THINK BECAUSE THEY SMOKE A FILTERED  
11 CIGARETTE, LOW-TAR CIGARETTE, A CIGARETTE THAT'S BEING  
12 CALLED A NO-ADDITIVE CIGARETTE, THEY MAY THINK THAT THOSE  
13 ARE SAFE.

14 SO THAT'S WHERE PEOPLE WILL SOMETIMES NOT  
15 PERSONALIZE THE RISK TO THEM, BECAUSE THEY THINK THE TYPE OF  
16 CIGARETTE THEY SMOKE IS SOMEHOW SAFE OR LESS HARMFUL.

17 Q. LET ME GO BACK TO THE GENERAL -- THE LEVEL 2, THE  
18 GENERAL AWARENESS WITH RESPECT TO CIGARETTE SMOKING BEING A  
19 CAUSE OF LUNG CANCER.

20 DID YOU LOOK AT THE ISSUE OF PEOPLE'S GENERAL  
21 AWARENESS OF THE EXTENT OR THE LEVEL OF RISK WITH RESPECT TO  
22 LUNG CANCER -- I MEAN, SMOKING BEING A CAUSE OF LUNG CANCER?

23 A. ARE YOU REFERRING TO HOW BIG OF A CAUSE OF LUNG  
24 CANCER CIGARETTE SMOKING IS?

25 Q. YES. ONCE AGAIN, YOU REPHRASED IT BETTER THAN I  
26 ASKED IT.

27 A. I DON'T REMEMBER THE FIGURES OFF THE TOP OF MY  
28 HEAD, BUT WHAT I DO REMEMBER IS THAT THERE ARE SUBSTANTIAL

JUDITH ANN OSSA, CSR NO. 2310

0912

1 NUMBERS OF PEOPLE, INCLUDING SMOKERS, WHO AREN'T AWARE THAT  
2 CIGARETTE SMOKING IS THE MAIN CAUSE, THE OVERWHELMINGLY  
3 LEADING CAUSE OF LUNG CANCER.

4 SO THAT GETS INTO AN AREA I MIGHT NOT HAVE  
5 TOUCHED ON EARLIER, THAT PEOPLE MAY BE AWARE THAT SMOKING IS  
6 GENERALLY HARMFUL TO HEALTH OR THAT IT IS A CAUSE OF LUNG  
7 CANCER, BUT MANY OF THEM -- WE ARE TALKING MILLIONS  
8 REALLY -- MANY MILLIONS OF SMOKERS ARE NOT AWARE THAT  
9 SMOKING IS BY FAR THE LEADING CAUSE OF LUNG CANCER, CAUSING  
10 80, 85, 90 PERCENT OF LUNG CANCER IN THE UNITED STATES.

11 Q. AND IN TERMS OF THE GENERAL AWARENESS OF THE HARM  
12 OF SMOKING, DID YOU LOOK AT ISSUES OF PERCENTAGES OR  
13 NUMBERS, AS YOU SIMILARLY QUANTIFIED IT, OF PEOPLE THAT  
14 BELIEVE THE RISK OF DYING FROM A DISEASE CAUSED BY CIGARETTE  
15 SMOKING?

16 IN OTHER WORDS, YOU KNOW, HOW MANY PEOPLE IN THE  
17 NUMBER OF SMOKERS ACTUALLY GET SICK AND DIE FROM SMOKING?

18 A. WELL, WE FOUND IN OUR REVIEW OF ALL OF THESE  
19 SURVEYS THAT ANYWHERE FROM 8 MILLION TO 15 MILLION SMOKERS  
20 IN THE UNITED STATES WERE NOT AWARE THAT SMOKING IS A CAUSE  
21 OF SOME OF THESE DISEASES THAT WE MENTIONED, LUNG CANCER,  
22 STROKE, HEART DISEASE, EMPHYSEMA.

23 WE MENTIONED MILLIONS OF PEOPLE MOMENTS AGO. THE  
24 RANGE WOULD BE FROM ABOUT 8 MILLION TO ABOUT 15 MILLION  
25 AMERICANS WHO SMOKE WHO ARE UNAWARE OF SOME OF THE MAJOR  
26 DISEASES THAT CIGARETTE SMOKING CAUSES.

27 Q. AND I WANT TO TALK TO YOU -- I'LL TRY TO DO IT  
28 BRIEFLY. IN THE COURSE OF YOUR WORK AT THE OFFICE OF

JUDITH ANN OSSA, CSR NO. 2310

0913

1 SMOKING AND HEALTH, HAVE YOU BEEN PROVIDED INFORMATION ON  
2 WHETHER OR NOT THERE ARE ADDITIVES IN COMMERCIALY SOLD  
3 CIGARETTES?

4 A. YES.

5 Q. AND CAN YOU TELL US -- FIRST OF ALL, HAVE YOU

6 BEEN PROVIDED INFORMATION THAT IS CONFIDENTIAL?  
7 A. YES.  
8 Q. SO WE CAN'T GO INTO THE SUBSTANCE OF WHAT YOU'VE  
9 BEEN PROVIDED; CORRECT?  
10 A. WELL, LET ME ANSWER THAT THIS WAY: SOME  
11 INFORMATION WAS PROVIDED TO ME WHEN I WAS DIRECTOR OF THE  
12 FEDERAL OFFICE ON SMOKING AND HEALTH WHICH I WAS REQUIRED BY  
13 LAW TO KEEP CONFIDENTIAL.  
14 HOWEVER, THE MAJOR CIGARETTE MANUFACTURERS  
15 RELEASED A LIST TO THE PUBLIC IN 1994 ON ADDITIVES.  
16 SO I CAN TALK ABOUT THAT. THAT INFORMATION WOULD  
17 NOT BE CONFIDENTIAL.  
18 MS. CHABER: AND, YOUR HONOR, THIS HAS BEEN  
19 PREMARKED, AND I BELIEVE SHOULD ALREADY BE IN YOUR BINDER.  
20 IT'S EXHIBIT 1627.  
21 PLEASE LET ME KNOW, YOUR HONOR, IF YOU DON'T HAVE  
22 IT.  
23 YOUR HONOR, IT WOULD HAVE BEEN IN THE NEWEST  
24 BINDER. IT WAS AT THE VERY FRONT OF THAT, OUT OF SEQUENCE,  
25 IF YOU RECALL.  
26 IT'S NOT THERE?  
27 THE COURT: NOT THERE. I THINK IT WAS IN  
28 YESTERDAY'S BINDER AND NOT TODAY'S BINDER, THE ONE I GAVE  
JUDITH ANN OSSA, CSR NO. 2310

0914

1 YOU BACK YESTERDAY.  
2 MS. CHABER: AND YOU DID.  
3 DO YOU HAVE A COPY?  
4 (DOCUMENT PRODUCED)  
5 MS. CHABER: YOUR HONOR, I CAN GIVE YOU -- AND  
6 WE'LL HAVE A WHOLE BUNCH COPIED. I THOUGHT IT WAS STILL IN  
7 THE BINDER, SINCE IT WAS THERE YESTERDAY.  
8 THE COURT: NO.  
9 CAN I MARK ON THIS 1627?  
10 MS. CHABER: YES.  
11 (DOCUMENT MORE PARTICULARLY  
12 LISTED IN THE INDEX PREMARKED  
13 FOR IDENTIFICATION PLAINTIFFS'  
14 EXHIBIT # 1627)  
15 MS. CHABER: Q. I'M HANDING YOU, DR. DAVIS,  
16 EXHIBIT 1627.  
17 CAN YOU IDENTIFY THAT?  
18 A. THIS IS THE LIST OF ADDITIVES USED IN CIGARETTES  
19 THAT WAS RELEASED BY THE MAJOR CIGARETTE COMPANIES IN THE  
20 UNITED STATES IN 1994.  
21 MS. CHABER: AT THIS TIME, YOUR HONOR, I WOULD  
22 OFFER IT INTO EVIDENCE.  
23 MS. MASON: NO OBJECTION, YOUR HONOR.  
24 MR. FURR: NO OBJECTION.  
25 THE COURT: 1627 IS RECEIVED.  
26 (DOCUMENT MORE PARTICULARLY  
27 LISTED IN THE INDEX RECEIVED  
28 IN EVIDENCE AS PLAINTIFFS'  
JUDITH ANN OSSA, CSR NO. 2310

0915

1 EXHIBIT # 1627)  
2 MS. CHABER: Q. NOW, DOCTOR, IS THAT THE SAME  
3 FORM OR FORMAT OF THE MATERIALS YOU RECEIVED WHILE YOU WERE  
4 AT THE OFFICE OF SMOKING AND HEALTH?  
5 A. NO.  
6 Q. OKAY. AND WITHOUT GETTING INTO ANY CONFIDENTIAL  
7 INFORMATION, CAN YOU GIVE US AN IDEA OF WHAT THE DIFFERENCE  
8 IS BETWEEN 1627 AND WHAT YOU RECEIVED AT THE OFFICE?

9 A. THE LISTS OF ADDITIVES THAT WERE PROVIDED TO THE  
10 OFFICE ON SMOKING AND HEALTH WOULD INCLUDE THE NAME OF THE  
11 CHEMICAL AS WELL AS THE CHEMICAL ABSTRACT NUMBER, WHICH IS A  
12 SPECIAL NUMBER ATTACHED TO A PARTICULAR CHEMICAL BY AN  
13 ORGANIZATION THAT DEALS WITH NAMING CHEMICALS.

14 AND THAT WAS THE ONLY KIND OF INFORMATION, AS I  
15 RECALL, THAT WAS INCLUDED IN THOSE LISTS THAT WERE PROVIDED  
16 TO THE OFFICE ON SMOKING AND HEALTH.

17 THE CHEMICAL ABSTRACT NUMBER, I BELIEVE, WAS  
18 REQUIRED UNDER FEDERAL REGULATION OR LEGISLATION. SO THOSE  
19 WERE THE TWO IDENTIFIERS FOR THE DIFFERENT ADDITIVES, THE  
20 CHEMICAL NAME AND THE CHEMICAL ABSTRACT NUMBER.

21 BUT THE LIST DID NOT INCLUDE THE INFORMATION THAT  
22 YOU SEE HERE IN THIS EXHIBIT, NAMELY, WHETHER IT'S ON THE  
23 GRAS LIST, WHICH IS GENERALLY RECOGNIZED AS SAFE, OR WHETHER  
24 THESE CHEMICALS ARE FOUND IN VARIOUS FOODS OR OTHER  
25 CONSUMABLES.

26 Q. OKAY. AND WE'LL GET TO THE DETAILS OF THAT IN A  
27 MOMENT.

28 I JUST WANT TO FIND OUT, IN THE LIST THAT WAS  
JUDITH ANN OSSA, CSR NO. 2310

0916

1 PROVIDED TO YOU, THE CONFIDENTIAL LIST THAT WAS PROVIDED AS  
2 YOU'VE DESCRIBED, WERE THERE ANY TEST DATA PROVIDED FROM THE  
3 CIGARETTE COMPANIES AS TO THE SAFETY OF ANY OF THOSE  
4 ADDITIVES ON THAT LIST AS USED IN CIGARETTES?

5 A. ANY INFORMATION ON SAFETY OF THOSE ADDITIVES?

6 Q. YES.

7 A. I DON'T RECALL RECEIVING ANY INFORMATION ON  
8 SAFETY OF THE ADDITIVES WHEN WE WERE GIVEN THE LIST.

9 Q. WERE YOU GIVEN INFORMATION ON TESTING BY THE  
10 CIGARETTE COMPANIES WITH RESPECT TO WHAT WOULD HAPPEN IF THE  
11 ADDITIVE, ONE, WAS PUT IN A CIGARETTE AND BURNED AND INHALED  
12 BY PEOPLE?

13 A. NO.

14 Q. THE LIST THAT YOU WERE GIVEN, WHAT WAS THE  
15 PURPOSE OF THIS INFORMATION BEING PROVIDED?

16 A. IT WAS PROVIDED TO OUR OFFICE AS A RESULT OF  
17 LEGISLATION PASSED BY CONGRESS IN 1984, WHICH REQUIRED THE  
18 CIGARETTE COMPANIES TO PROVIDE THIS LIST ON A CONFIDENTIAL  
19 BASIS IN SUCH A WAY THAT IT WAS NOT IDENTIFIED WHICH  
20 ADDITIVES WERE USED BY WHICH COMPANIES AND IN WHICH  
21 CIGARETTE BRANDS.

22 Q. BASICALLY, ONE --

23 A. IT WAS ONE LONG MASTER LIST, KIND OF LIKE THIS  
24 ONE THAT WE RECEIVED FROM A LAW FIRM REPRESENTING THE  
25 CIGARETTE COMPANIES (INDICATING), WHICH BASICALLY SAID:  
26 "HERE ARE ALL THE ADDITIVES USED IN THE PAST YEAR BY THE  
27 COMPANIES WE REPRESENT," WHICH WOULD BE THE LEADING  
28 CIGARETTE COMPANIES IN THE COUNTRY.

JUDITH ANN OSSA, CSR NO. 2310

0917

1 THE CONGRESS, WHEN THEY PASSED THAT LAW, I  
2 BELIEVE THE POINT WAS TO GIVE THE FEDERAL GOVERNMENT SOME  
3 ABILITY TO KNOW WHAT'S IN -- WHAT'S IN CIGARETTES, WHAT  
4 ADDITIVES ARE USED IN THE MANUFACTURE OF CIGARETTES.

5 I HAVE NOT GONE BACK TO CAREFULLY REVIEW THE  
6 CONGRESSIONAL INTENT. I BELIEVE THE GENERAL PURPOSE WAS TO  
7 ALLOW THE FEDERAL GOVERNMENT TO LOOK AT THIS INFORMATION ON  
8 A CONFIDENTIAL BASIS.

9 Q. IT WAS YOUR OFFICE THAT WAS CHARGED AT LOOKING AT  
10 THIS?

11 A. CORRECT. THE LAW REQUIRED THE LIST TO BE



12 PROVIDED TO THE SECRETARY OF THE DEPARTMENT OF HEALTH AND  
13 HUMAN SERVICES. AND THE SECRETARY DESIGNATED THE DIRECTOR  
14 OF THE OFFICE OF SMOKING AND HEALTH TO SERVE THAT FUNCTION,  
15 TO RECEIVE THE LISTS, AND ACT AS GUARDIAN OF THOSE LISTS.

16 Q. AND ON THE PUBLIC LIST THAT YOU HAVE IN FRONT OF  
17 YOU, EXHIBIT 1627, HOW MANY ADDITIVES ARE LISTED?

18 A. I BELIEVE IT'S 599.

19 Q. AND DO YOU HAVE ANY WAY OF KNOWING --

20 A. YES, 599.

21 Q. AND WAS THAT ROUGHLY THE NUMBER GIVEN TO YOU OR  
22 WERE THERE MORE OR LESS?

23 A. I REALLY DON'T KNOW IF I'M ALLOWED UNDER FEDERAL  
24 LAW TO DISCLOSE THAT. IT WOULD PROBABLY BE A WHOLE OTHER  
25 LAWSUIT TO FIGURE THAT ONE OUT. SO I BETTER NOT SAY.

26 Q. ALL RIGHT. WE WON'T GO INTO THAT. WE'LL DEAL  
27 WITH THE 599 THAT ARE ON THAT LIST.

28 LOOKING AT THAT LIST, PLAINTIFFS' EXHIBIT 1627,  
JUDITH ANN OSSA, CSR NO. 2310

0918

1 IS THERE ANY WAY TO DETERMINE WHAT ADDITIVES ARE IN A  
2 MARLBORO CIGARETTE?

3 A. NO.

4 Q. IS THERE ANY WAY TO DETERMINE WHAT ADDITIVES  
5 THERE ARE IN A CAMEL CIGARETTE?

6 A. NO.

7 Q. IS THERE ANY WAY TO DETERMINE WHAT ADDITIVES  
8 THERE ARE IN A CAMEL LIGHT CIGARETTE?

9 A. NO.

10 Q. HOW ABOUT A CAMEL LIGHT 100?

11 A. NO.

12 Q. AND IS THERE ANY WAY TO DETERMINE WHICH COMPANY  
13 IS USING WHICH ADDITIVES IN GENERAL?

14 A. NO.

15 Q. IS THERE ANY WAY TO DETERMINE WHICH ADDITIVES ARE  
16 USED IN COMBINATION WITH EACH OTHER?

17 A. NO.

18 Q. WHAT WOULD BE THE SIGNIFICANCE OF KNOWING WHICH  
19 ADDITIVES WERE USED IN COMBINATION WITH EACH OTHER?

20 A. WELL, THE CHIEF CONCERN HERE IS WHAT HAPPENS WHEN  
21 THESE ADDITIVES GET MIXED WITH TOBACCO LEAF AND THEN GET  
22 BURNED AT A HIGH TEMPERATURE.

23 MOST OF THOSE 4,000 OR 5,000 CHEMICALS THAT WE  
24 TALKED ABOUT EARLIER THAT ARE IN TOBACCO SMOKE COME FROM THE  
25 PROCESS OF COMBUSTION. THAT'S THE BURNING PROCESS.

26 AND WHEN YOU PUT LEAVES TOGETHER AND CHEMICALS  
27 TOGETHER AND THEN BURN THEM AT A VERY HIGH TEMPERATURE,  
28 CHEMICAL REACTIONS TAKE PLACE.

JUDITH ANN OSSA, CSR NO. 2310

0919

1 IT'S ALMOST LIKE YOU HAVE A CHEMICAL FACTORY OR A  
2 HIGH SCHOOL OR COLLEGE LABORATORY, WHERE YOU'RE MIXING  
3 CHEMICALS UP TO SEE WHAT HAPPENS, YOU MIX THE CHEMICALS  
4 TOGETHER TO SEE WHAT HAPPENS. IT'S LIKE DOING CIGARETTE  
5 EXPERIMENTS, BY MIXING CHEMICALS, BURNING THEM, AND THEN YOU  
6 GET ALL THESE NEW CHEMICALS OUT OF THE END.

7 IN OTHER WORDS, YOU MIGHT START WITH CHEMICAL A  
8 AND CHEMICAL B AND CHEMICAL C. YOU PUT THEM TOGETHER, YOU  
9 BURN THEM, AND YOU GET CHEMICALS D, E, F, G AND H, WHICH  
10 WERE NEVER THERE IN THE FIRST PLACE, BECAUSE THE CHEMICALS  
11 COMBINED UNDER HIGH TEMPERATURE AND YIELDED NEW CHEMICALS.

12 AND SO THE CONCERN ABOUT ADDITIVES IS MAINLY THAT  
13 THEY MAY COMBINE WITH OTHER ADDITIVES OR WITH THINGS THAT  
14 ARE NATURALLY IN TOBACCO TO CAUSE -- TO CAUSE A CHEMICAL

15 REACTION WHEN BURNED THAT WOULD RESULT IN NEW CHEMICALS THAT  
16 WOULD CAUSE CANCER OR OTHER DISEASES.

17 Q. DID YOUR OFFICE HAVE THE ABILITY TO TEST THOSE  
18 599 OR SO ADDITIVES ON YOUR OWN TO SEE IF THEY WERE SAFE FOR  
19 PUTTING IN A CIGARETTE THAT WAS GOING TO BE BURNED AND  
20 INHALED?

21 A. NO.

22 Q. AND WHY IS THAT?

23 A. WELL, THE MAIN REASON IS THAT WE DID NOT HAVE THE  
24 FUNDING TO DO THAT. FUNDING OF THE OFFICE ON SMOKING AND  
25 HEALTH WAS QUITE LIMITED FOR WHAT WE WERE ASKED TO DO, AND  
26 ACTUALLY REQUIRED TO DO BY CONGRESS, SUCH AS PUTTING OUT  
27 THESE THINGS EVERY YEAR (INDICATING).

28 \$3.5 MILLION. WHILE IT MIGHT SOUND LIKE A LOT,  
JUDITH ANN OSSA, CSR NO. 2310

0920

1 WHEN YOU HAVE TO PAY A STAFF OF 18 TO 25 PEOPLE AND CONTRACT  
2 WITH AUTHORS TO WRITE PIECES OF THIS (INDICATING), AND  
3 DEVELOP SOME TV SPOTS TO EDUCATE THE PUBLIC, WHEN YOU DO ALL  
4 THOSE KINDS OF THINGS, NOT MUCH IS LEFT OVER.

5 AND WE DIDN'T HAVE ENOUGH TO EVEN DO A LITERATURE  
6 SEARCH TO SEE WHAT RESEARCH HAD ALREADY SHOWN ABOUT THESE  
7 CHEMICALS.

8 I TRIED TO FIND FUNDING FROM THE CDC, THE CENTERS  
9 FOR DISEASE CONTROL, TO SIMPLY DO LITERATURE SEARCHES, TO  
10 SEE WHAT RESEARCH HAS SHOWN ABOUT THESE CHEMICALS.

11 SO WE COULDN'T EVEN FIND FUNDING TO DO THAT, MUCH  
12 LESS WHAT YOU'RE ASKING ABOUT, AND THAT IS TO CONDUCT OUR  
13 OWN TESTS AND OUR OWN EXPERIMENTS AND OUR OWN LABORATORY  
14 STUDIES.

15 Q. DID YOU GO TO THE CIGARETTE COMPANIES AND REQUEST  
16 MORE INFORMATION FROM THEM?

17 A. THE MAIN INFORMATION THAT I REMEMBER US ASKING  
18 THEM FOR WAS INFORMATION ON WHICH ADDITIVES WERE USED THE  
19 MOST.

20 AND THEY DID PROVIDE INFORMATION TO US, THAT LIST  
21 OF THE ADDITIVES THAT WERE USED IN THE GREATEST AMOUNTS BY  
22 THE WHOLE CIGARETTE INDUSTRY. I DON'T REMEMBER --

23 Q. IN WHAT FASHION -- I MEAN, BY WHAT MEASUREMENT,  
24 WHEN YOU SAY --

25 A. TOTAL POUNDS.

26 Q. POUNDS?

27 A. OR TONS, WHATEVER IT WAS.

28 Q. OKAY.

JUDITH ANN OSSA, CSR NO. 2310

0921

1 A. TOTAL TONS OF ADDITIVE A OR CHEMICAL B USED BY  
2 THE ENTIRE INDUSTRY.

3 SO THEY GAVE US A RANKING OF THE ADDITIVES THAT  
4 WERE USED IN THE GREATEST AMOUNTS IN THE INDUSTRY. NOT  
5 BROKEN DOWN BY COMPANY OR BY BRAND IS THE POINT I'M MAKING.

6 THE COURT: IS THIS A GOOD TIME FOR LUNCH?

7 MS. CHABER: YES.

8 THE COURT: LET'S DO ONE HOUSEKEEPING MATTER  
9 BEFORE WE GO TO LUNCH. LET'S JUST HAVE MARKED FOR  
10 IDENTIFICATION PURPOSES ONLY WHATEVER WRITING WAS DONE ON  
11 THE BOARD.

12 MS. CHABER: THANK YOU.

13 THE COURT: WAS THAT BY THE DOCTOR OR BY YOU?

14 MS. CHABER: THAT WAS BY DR. DAVIS.

15 THE COURT: LET'S JUST MARK THAT FOR  
16 IDENTIFICATION PURPOSES ONLY. THAT WILL BE 1816.

17 IS THAT THE NEXT ONE, TATSUO?

18 THE CLERK: YES  
19 (DOCUMENT MORE PARTICULARLY  
20 LISTED IN THE INDEX MARKED  
21 FOR IDENTIFICATION PLAINTIFFS'  
22 EXHIBIT # 1816)  
23 THE COURT: THE WRITING IS COMPLETE; RIGHT?  
24 THERE IS NOT GOING TO BE MORE ADDED TO IT?  
25 MS. CHABER: NO, IT'S COMPLETE.  
26 CAN I WRITE ON THE CORNER "DR. DAVIS" JUST SO  
27 THAT WE DON'T GET CONFUSED?  
28 THE COURT: IS THERE ANY OBJECTION TO THAT?  
JUDITH ANN OSSA, CSR NO. 2310

0922

1 MR. FURR: NO OBJECTION.  
2 THE COURT: YOU MAY DO THAT.  
3 MS. CHABER: (WRITING ON EXHIBIT)  
4 THE COURT: OKAY. JURORS, IT'S LUNCHTIME.  
5 HAVE A GOOD LUNCH. REMEMBER TO CONTINUE TO  
6 FOLLOW THE ADMONITION. WE'LL SEE YOU BACK AT 1:30.  
7 (LUNCH RECESS TAKEN AT 12:05 P.M.)  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

JUDITH ANN OSSA, CSR NO. 2310

0923

1 AFTERNOON SESSION 1:35 P.M.  
2 THURSDAY, JANUARY 20, 2000  
3 THE COURT: OKAY. I THINK WE ARE ALL BACK AND  
4 READY TO GO.  
5 MS. CHABER: JUST A QUICK HOUSECLEANING MEASURE  
6 BEFORE I GO BACK TO QUESTIONING. I HAVE HERE, YOUR HONOR, A  
7 COPY OF CHAPTER 4 OF THE 1989 SURGEON GENERAL'S REPORT THAT  
8 I'D LIKE TO HAVE MARKED.  
9 THE COURT: ALL RIGHT.  
10 THE CLERK: PLAINTIFFS' EXHIBIT 1817.  
11 (DOCUMENT MORE PARTICULARLY  
12 LISTED IN THE INDEX MARKED  
13 FOR IDENTIFICATION PLAINTIFFS'  
14 EXHIBIT # 1817)  
15 THE COURT: YOU OFFERED THAT INTO EVIDENCE?  
16 MS. CHABER: I'M OFFERING IT INTO EVIDENCE, YOUR  
17 HONOR, YES.  
18 THE COURT: WHAT IS THE OBJECTION?  
19 MR. FURR: YOUR HONOR, THE OBJECTION IS HEARSAY  
20 WITHIN HEARSAY.

21 THE COURT: SUSTAINED.  
22  
23 DIRECT EXAMINATION (CONTINUED)  
24 BY MS. CHABER: Q. DR. DAVIS, I WANT TO GO BACK  
25 TO THE INGREDIENTS LIST OR ADDITIVES LIST THAT WE HAVE BEEN  
26 DEALING WITH, PLAINTIFFS' EXHIBIT 1627.  
27 AND WHAT I'D LIKE TO DO IS SHOW, FOR THE PURPOSES  
28 OF THE JURY UNDERSTANDING WHAT WE'RE DOING. AND YOU CAN  
JUDITH ANN OSSA, CSR NO. 2310

0924

1 KEEP YOUR COPY UP THERE. I'LL USE MINE.  
2 AND I BELIEVE THIS IS ALREADY IN EVIDENCE, YOUR  
3 HONOR.  
4 THE COURT: WHICH NUMBER?  
5 MS. CHABER: 1627.  
6 THE COURT: YES, IT IS.  
7 MS. CHABER: Q. THIS WAS NOT THE FORMAT OF WHAT  
8 YOU HAD RECEIVED IN THE CONFIDENTIAL POSITION WHILE YOU WERE  
9 WORKING IN THE OFFICE OF SMOKING AND HEALTH, IS IT?  
10 A. NO, IT WASN'T.  
11 Q. THIS IS WHAT WAS RELEASED TO THE PUBLIC?  
12 A. CORRECT.  
13 Q. AND THERE ARE CERTAIN SYMBOLS OR INITIALS THERE.  
14 AND I THINK YOU HAD MENTIONED ONE PREVIOUSLY AND YOU SAID  
15 GRAS. AND MAYBE I'LL JUST POINT IT OUT WHERE IT APPEARS.  
16 THAT WAS "GRAS"; IS THAT CORRECT, DOCTOR?  
17 A. YES.  
18 Q. CAN YOU TELL US WHAT THAT MEANS, THAT  
19 ABBREVIATION, GRAS?  
20 A. IT STANDS FOR GENERALLY RECOGNIZED AS SAFE.  
21 Q. OKAY. GENERALLY RECOGNIZED AS SAFE FOR WHAT?  
22 A. FOR USE IN FOODS, FOR NORMAL FOOD CONSUMPTION.  
23 Q. IS THE GRAS DESIGNATION A DESIGNATION THAT MEANS  
24 THAT SOMETHING IS GENERALLY REGARDED AS SAFE WHEN BURNED?  
25 A. WHEN BURNED AND INHALED INTO THE LUNGS?  
26 Q. YES.  
27 A. NO, ABSOLUTELY NOT. IT'S SPECIFIC TO FOOD  
28 ADDITIVES. IT'S A DESIGNATION USED BY THE FDA, THE FOOD AND  
JUDITH ANN OSSA, CSR NO. 2310

0925

1 DRUG ADMINISTRATION.  
2 AND IT INDICATES THAT WHEN THESE ADDITIVES ARE IN  
3 FOOD AND ARE SWALLOWED AND GO INTO THE STOMACH, WHERE THEY  
4 ARE DEACTIVATED BY THE ACID IN YOUR STOMACH, THEN YOU'RE  
5 SAFE.  
6 Q. SO WHY WOULDN'T ONE BE ABLE TO JUST ASSUME THAT  
7 SOMETHING THAT WAS GENERALLY REGARDED AS SAFE FOR FOOD  
8 CONSUMPTION WOULD BE REGARDED AS SAFE TO BE BURNED AND  
9 INHALED INTO THE LUNGS?  
10 A. THERE ARE A COUPLE OF REASONS WHY.  
11 ONE REASON I JUST ALLUDED TO, AND THAT IS, WHEN  
12 YOU EAT FOOD, YOU SWALLOW IT AND IT GOES INTO YOUR STOMACH,  
13 WHERE YOU HAVE ONE OF THE MOST POWERFUL ACIDS, HYDROCHLORIC  
14 ACID, WHICH HELPS DIGEST FOOD. AND IT WOULD TYPICALLY  
15 INACTIVATE CHEMICALS SUCH AS ADDITIVES WHEN THEY GO THROUGH  
16 THE STOMACH. SO THEY WOULD BE BROKEN DOWN AND WOULD BE  
17 INACTIVATED AS THEY GO THROUGH YOUR STOMACH AND THEN INTO  
18 YOUR INTESTINES.  
19 IT'S AN ENTIRELY DIFFERENT MATTER TO TAKE AN  
20 ADDITIVE, MIX IT WITH OTHER ADDITIVES, MIX IT WITH WHAT'S IN  
21 TOBACCO NORMALLY, AND THEN BURN IT AT A VERY HIGH  
22 TEMPERATURE, AND THEN TAKE IT IN REPEATEDLY, HUNDREDS OF  
23 TIMES A DAY INTO THE FINE PASSAGES OF YOUR LUNG, WHERE THEY

24 GO TO THE TINY AIR SACS IN YOUR LUNG, WHICH WE CALL ALVEOLI,  
25 WHICH ARE VERY THIN LAYERS OF TISSUE WHICH ARE VERY  
26 SUSCEPTIBLE TO DAMAGE.

27 SO IT'S AN ENTIRELY DIFFERENT PROCESS. AND YOU  
28 CAN'T LEGITIMATELY USE THE GRAS DESIGNATION FOR CIGARETTE

JUDITH ANN OSSA, CSR NO. 2310

0926

1 ADDITIVES.

2 Q. IS THE GRAS DESIGNATION, "GENERALLY REGARDED AS  
3 SAFE," IS THAT A DESIGNATION BY THE FDA OR THE FOOD AND DRUG  
4 ADMINISTRATION?

5 A. YES.

6 Q. AND DOES THE FOOD AND DRUG ADMINISTRATION HAVE  
7 ANY REQUIREMENTS FOR THE MANUFACTURER TO DEMONSTRATE THE  
8 SAFETY OF THE ADDITIVE BEFORE THEY GIVE IT A GRAS OR  
9 GENERALLY REGARDED AS SAFE DESIGNATION?

10 A. I BELIEVE SO. I DON'T HAVE INTIMATE KNOWLEDGE OF  
11 THE WHOLE GRAS PROCESS, BUT MY UNDERSTANDING IS THAT IF  
12 SOMETHING ISN'T ON THE GRAS LIST AND YOU WANT IT TO BE ON  
13 THE GRAS LIST, THEN YOU HAVE TO SHOW THAT IT IS SAFE WHEN  
14 USED AS A FOOD ADDITIVE.

15 IF IT IS ON THE GRAS LIST, THEN A FOOD  
16 MANUFACTURER CAN PUT THE ADDITIVE IN FOOD BECAUSE IT'S  
17 ALREADY ON THE GRAS LIST.

18 IF IT'S NOT ON THE GRAS LIST, THEN I GUESS A FOOD  
19 MANUFACTURER WOULD HAVE TWO OPTIONS. THEY CAN TRY AND ARGUE  
20 FOR THE CHEMICAL TO BE ON GRAS LIST, THEN GO THROUGH A  
21 PROCESS TO GET THE FDA TO APPROVE THAT. OR THEY COULD SHOW  
22 THAT EVEN IF YOU DON'T PUT THE ADDITIVE ON THE GRAS LIST,  
23 IT'S SAFE, AND PRESENT EVIDENCE TO THE FDA.

24 SO THAT WOULD BE MY UNDERSTANDING OF HOW THE  
25 PROCESS WOULD WORK.

26 Q. AND HAS THAT PROCESS BEEN DONE FOR ANY OF THE  
27 ADDITIVES IN CIGARETTES?

28 A. NO.

JUDITH ANN OSSA, CSR NO. 2310

0927

1 Q. ARE YOU AWARE OF ANYONE WHO HAS SHOWN THAT THE  
2 ADDITIVES LISTED IN THIS 1994 PUBLIC DISCLOSURE ARE  
3 GENERALLY REGARDED AS SAFE WHEN BURNED IN A CIGARETTE AND  
4 INHALED INTO THE LUNGS?

5 A. NO.

6 Q. I'M NOT GOING TO BELABOR, GIVEN THE TIME, THIS  
7 LIST, BUT, DOCTOR, WHAT IS NO. 20 ON THE LIST?

8 A. AMMONIA.

9 Q. THAT'S LISTED IN THIS PUBLIC DISCLOSURE AS:  
10 "OCCURS IN HUMAN/ANIMAL BREATH DUE TO PROTEIN  
11 METABOLISM;" -- I DON'T KNOW IF SOMETHING IS CUT  
12 OFF THERE.

13 A. I THINK THAT IS A SEMICOLON.

14 Q. "DISSOLVED IN WATER IT IS A NATURALLY OCCURRING  
15 SUBSTANCE THAT PLAYS A VITAL ROLE IN PROTEIN  
16 METABOLISM IN ANIMALS, INCLUDING MAN."

17 AND WHAT I JUST READ, IS THAT'S WHAT'S INCLUDED  
18 IN THE PUBLIC DISCLOSURE OF THE ADDITIVES IN CIGARETTES?

19 A. YES.

20 Q. IS AMMONIA USED IN ANY HOUSEHOLD CHEMICALS?

21 A. YES.

22 Q. HOUSEHOLD SUBSTANCES, SUCH AS?

23 A. FLOOR CLEANER, TOILET BOWL CLEANER.

24 Q. ARE YOU AWARE OF ANYONE SAYING THAT AMMONIA IN  
25 FLOOR CLEANER OR TOILET BOWL CLEANER IS REGARDED AS SAFE FOR  
26 INGESTION?

27 A. INGESTION IN CIGARETTE SMOKE INTO THE LUNGS?  
28 NO.  
JUDITH ANN OSSA, CSR NO. 2310  
0928  
1 AND APPARENTLY, IT'S NOT ON THE GRAS LIST  
2 EITHER. OTHERWISE, I ASSUME GRAS WOULD HAVE BEEN PUT INTO  
3 THIS DOCUMENT FOR AMMONIA.  
4 Q. AND DOCTOR, IS THERE CAFFEINE LISTED AS ONE OF  
5 THE INGREDIENTS ADDED TO CIGARETTES?  
6 A. YES.  
7 Q. IS COFFEE ONE OF THE INGREDIENTS ADDED TO  
8 CIGARETTES?  
9 A. IT'S ON THIS LIST, YES.  
10 Q. AND COGNAC?  
11 A. YES.  
12 Q. CHOCOLATE?  
13 A. YES.  
14 MS. CHABER: YOUR HONOR, AT THIS TIME, I WOULD  
15 OFFER PLAINTIFFS' EXHIBIT 363, 363 INTO EVIDENCE.  
16 AND I WOULD ASK THAT THIS BLOWUP BE MARKED 363-A.  
17 THE COURT: BEFORE YOU GET IT MARKED, LET'S SEE  
18 IF 363 GETS INTO EVIDENCE.  
19 IS THERE ANY OBJECTION TO 363?  
20 MR. FURR: NO OBJECTION.  
21 THE COURT: ALL RIGHT. 363 IS RECEIVED  
22 (DOCUMENT MORE PARTICULARLY  
23 LISTED IN THE INDEX RECEIVED  
24 IN EVIDENCE AS PLAINTIFFS'  
25 EXHIBIT # 363)  
26 MR. FURR: WE WOULD LIKE TO SEE THE BLOWUP.  
27 THE COURT: WHY DON'T YOU SHOW THEM THE BLOWUP,  
28 AND THEN IT WILL BE MARKED AS 363-A FOR IDENTIFICATION.  
JUDITH ANN OSSA, CSR NO. 2310

0929  
1 THERE IS NO OBJECTION TO 363? THAT'S RECEIVED.  
2 363-A IS A BLOWUP OF 363; RIGHT? CORRECT?  
3 MS. CHABER: YES, SIR.  
4 THE COURT: IS THERE ANY OBJECTION TO THAT  
5 BLOWUP BEING SHOWN TO THE JURY, WHICH I ASSUME IS THE  
6 PURPOSE FOR HAVING THE BLOWUP? ANY OBJECTION?  
7 MR. FURR: NO OBJECTION.  
8 THE COURT: OKAY.  
9 (DOCUMENT MORE PARTICULARLY  
10 LISTED IN THE INDEX MARKED  
11 FOR IDENTIFICATION PLAINTIFFS'  
12 EXHIBIT # 363-A)  
13 MS. CHABER: DOES THE COURT HAVE IT? IT'S IN  
14 BINDER 7.  
15 THE COURT: BINDER 7. IF YOU DON'T MIND DOING  
16 THAT THROUGHOUT THE TRIAL, THAT'S VERY HELPFUL.  
17 THAT'S FOR ALL PARTIES.  
18 MS. CHABER: ACTUALLY, MAY I HAVE ONE MOMENT  
19 WITH THE DEFENDANTS, YOUR HONOR?  
20 THE COURT: SURE. YES.  
21 (ATTORNEYS CONFER)  
22 MS. CHABER: YOUR HONOR, AFTER A DISCUSSION WITH  
23 COUNSEL, LOOKING AT THE BLOWUP, IT IS THE SAME DOCUMENT, BUT  
24 IN A DIFFERENT FORMAT AS 363 IN THE BINDER.  
25 THE COURT: OKAY. IS THERE ANY OBJECTION TO  
26 363-A BEING SHOWN?  
27 MR. FURR: NO OBJECTION.  
28 MS. MASON: NO.  
JUDITH ANN OSSA, CSR NO. 2310

0930

1 THE COURT: THAT'S FINE.  
2 THE COURT: LET ME JUST ASK ALL COUNSEL, IF YOU  
3 DON'T MIND, IF YOU WILL DO WHAT MS. CHABER DID. WHENEVER  
4 YOU HAVE A DOCUMENT, IF YOU COULD REFERENCE THE BINDER  
5 NUMBER AS WELL AS THE EXHIBIT NUMBER, THAT WILL BE A GREAT  
6 HELP TO ME.

7 MS. CHABER: ONCE AGAIN, I'M GOING TO HAVE TO  
8 APOLOGIZE FOR HOW DIFFICULT THIS IS TO READ (INDICATING).

9 Q. DR. DAVIS, COULD YOU READ THE PORTION OF THE  
10 FRANK STATEMENT. IT'S ONE PARAGRAPH, WHICH I INDICATED AND  
11 AM INDICATING HERE FOR THE JURY (INDICATING).

12 A. YES.  
13 "WE ALWAYS HAVE AND ALWAYS WILL COOPERATE  
14 CLOSELY WITH THOSE WHOSE TASK IT IS TO SAFEGUARD  
15 THE PUBLIC HEALTH."

16 Q. AND DR. DAVIS, AS A PUBLIC HEALTH DOCTOR, AS THE  
17 DIRECTOR OF THE OFFICE OF SMOKING AND HEALTH, AS THE CHIEF  
18 MEDICAL OFFICER OR, AS YOU DESCRIBED IT, SURGEON GENERAL FOR  
19 THE STATE OF MICHIGAN, DO YOU BELIEVE THAT THE CIGARETTE  
20 COMPANIES HAVE COOPERATED CLOSELY WITH THOSE "WHOSE TASK IT  
21 IS TO SAFEGUARD THE PUBLIC HEALTH"?

22 A. NO. THE FACT OF THE MATTER IS, IN MY OPINION,  
23 THAT THE TOBACCO INDUSTRY HAS GONE TO GREAT LENGTHS TO  
24 UNDERMINE THE EFFORTS OF THE SURGEON GENERAL AND OTHERS  
25 WHOSE TASK IT IS TO SAFEGUARD THE PUBLIC HEALTH.

26 MS. CHABER: I HAVE NO FURTHER QUESTIONS.  
27 THE COURT: OKAY. WHO IS NEXT? MR. FURR.  
28 MR. FURR: I WILL BE FIRST, YOUR HONOR.

JUDITH ANN OSSA, CSR NO. 2310

0931

1 THE COURT: OKAY.

2 THE WITNESS: WHO DOES THIS BELONG TO  
3 (INDICATING).

4 THE COURT: MS. CHABER, THE WITNESS IS ASKING  
5 ABOUT WHO IS THE OWNER OF THIS BINDER?

6 MS. CHABER: I'M SORRY. YES.

7 DID THE COURT WANT THE CLERK TO MARK THIS, SINCE  
8 WE PREMARKED THESE, TO PUT "EVIDENCE" ON THE BINDER AT THE  
9 TIME THAT WE OFFER THEM OR SUBSEQUENTLY?

10 HE'S GOT IT ON HIS LIST.

11 THE COURT: LET ME LEAVE IT UP TO TATSUO. HE'S  
12 THE EXPERT ON THIS AND WHATEVER WAY HE'S MORE COMFORTABLE  
13 DOING IT IS FINE.

14 MR. FURR: MAY I PROCEED, YOUR HONOR?

15 THE COURT: MR. FURR, YES.

16

17 CROSS-EXAMINATION

18 BY MR. FURR: Q. GOOD AFTERNOON, DR. DAVIS.

19 A. GOOD AFTERNOON, MR. FURR.

20 Q. AND YOU AND I HAVE MET BEFORE, HAVEN'T WE, SIR?

21 A. A FEW TIMES, I THINK.

22 Q. WE HAVE MET WHEN I HAD A CHANCE TO ASK YOU  
23 QUESTIONS IN OTHER CASES; IS THAT CORRECT?

24 A. YES.

25 Q. IN ADDITION TO MEETING ME BEFORE, DR. DAVIS,  
26 YOU'VE MET LOTS OF LAWYERS THAT REPRESENT R.J. REYNOLDS AND  
27 PHILIP MORRIS AND OTHER TOBACCOS COMPANIES, HAVEN'T YOU,  
28 SIR?

JUDITH ANN OSSA, CSR NO. 2310

0932

1 A. I'VE MET A NUMBER OF THEM, YES.

2 Q. THAT'S BECAUSE YOU HAVE BEEN INVOLVED IN A NUMBER

3 OF CASES IN WHICH VARIOUS TYPES OF PLAINTIFFS HAVE SUED THE  
4 TOBACCO COMPANIES; CORRECT?

5 A. RIGHT.

6 Q. I BELIEVE YOU'VE BEEN INVOLVED IN CASES IN  
7 NEVADA, THE BADILLO CASE; CORRECT?

8 A. CORRECT.

9 Q. YOU WERE INVOLVED IN NEW JERSEY IN THE AVALLONE  
10 CASE?

11 A. YES.

12 Q. YOU HAVE BEEN INVOLVED IN CASES CALLED BROIN,  
13 ENGLE IN FLORIDA?

14 A. YES.

15 Q. YOU WERE A WITNESS FOR THE PLAINTIFFS IN THE  
16 IRONWORKERS CASE IN OHIO; CORRECT, SIR?

17 A. YES.

18 Q. YOU WERE A WITNESS FOR THE PLAINTIFFS IN BOTH  
19 NORTHWEST LABORERS AND THE AG CASE IN WASHINGTON?

20 A. YES.

21 Q. YOU WERE A WITNESS FOR THE AG CASE IN  
22 MISSISSIPPI?

23 A. YES.

24 Q. AND IN THE AG CASE IN OKLAHOMA?

25 A. YES.

26 Q. HAVE I MISSED ANY OF THEM?

27 A. NOT THAT I RECALL.

28 Q. IN FACT, YOU'VE BEEN A WITNESS ALSO IN CASES  
JUDITH ANN OSSA, CSR NO. 2310

0933

1 SIMILAR TO THIS ONE, IN WHICH INDIVIDUAL PLAINTIFFS WERE  
2 SUING THE TOBACCO COMPANIES ON PRODUCT LIABILITY CLAIMS; IS  
3 THAT CORRECT, SIR?

4 A. A FEW; THAT'S RIGHT.

5 Q. IN FACT, ONE OF THE CASES THAT YOU WERE A WITNESS  
6 IN WAS A CASE HERE IN SAN FRANCISCO ABOUT A YEAR AGO;  
7 CORRECT, SIR?

8 A. YES, SIR.

9 Q. THAT WAS A CASE IN WHICH MS. CHABER ALSO  
10 REPRESENTED THE PLAINTIFF; IS THAT CORRECT?

11 A. THAT'S CORRECT.

12 Q. YOU HAD WORKED WITH HER BEFORE IN CASES SIMILAR  
13 TO THIS ONE?

14 A. WHEN YOU SAY "CASES," I THINK THERE WAS ONE.

15 Q. THAT'S RIGHT. THIS IS THE SECOND CASE WITH  
16 MS. CHABER?

17 A. CORRECT.

18 Q. IN ADDITION TO TESTIFYING IN CASES WHERE CLAIMS  
19 HAVE BEEN BROUGHT AGAINST TOBACCO COMPANIES, YOU HAVE ALSO  
20 BEEN INVOLVED IN OTHER PROJECTS RELATED TO LITIGATION  
21 AGAINST THE TOBACCO COMPANIES, HAVEN'T YOU, SIR?

22 A. IF YOU COULD BE MORE PRECISE, I'D BE HAPPY TO TRY  
23 AND ANSWER YOUR QUESTION.

24 Q. WE'LL DO THAT.

25 YOU HAVE MADE PRESENTATIONS TO GROUPS OF LAWYERS  
26 RELATED TO ISSUES INVOLVED IN CASES LIKE THIS ONE; IS THAT  
27 CORRECT, SIR?

28 A. WELL, I MADE ONE RECENT PRESENTATION, WHICH IS  
JUDITH ANN OSSA, CSR NO. 2310

0934

1 PROBABLY THE ONE ON YOUR MIND.

2 YOU USED THE PLURAL, SO I'M NOT SURE WHICH ONES  
3 YOU ARE REFERRING TO.

4 Q. AT LEAST LAST OCTOBER, YOU MADE A PRESENTATION AT  
5 A CONFERENCE IN PHOENIX ON TOBACCO LITIGATION; IS THAT



6 CORRECT?

7 A. I DID. AND WE DISCUSSED THAT AT LENGTH IN THE  
8 DEPOSITION FOR THIS CASE.

9 BUT I JUST WANT TO BE SURE I UNDERSTAND YOUR  
10 QUESTION. YOU ASKED ME IF I HAD MADE PRESENTATIONS, AND NOW  
11 YOU ARE REFERRING TO ONE, SO I JUST DON'T KNOW HOW MANY  
12 YOU'RE REFERRING TO.

13 Q. THAT'S FAIR.

14 THE PRESENTATION YOU MADE IN PHOENIX INVOLVED HOW  
15 TO PROVE MEDICAL CAUSATION IN CASES AGAINST THE TOBACCO  
16 COMPANIES; IS THAT CORRECT?

17 A. THAT'S CLOSE. I CAN'T REMEMBER THE EXACT TITLE  
18 OF THE PRESENTATION. PROVING CAUSATION IN TOBACCO AND  
19 HEALTH CASES. I'M NOT EXACTLY SURE WHAT THE TITLE WAS.

20 Q. IN THE AUDIENCE THAT DAY, THERE WERE LAWYERS WHO  
21 BRING LAWSUITS AGAINST THE TOBACCO COMPANIES; CORRECT?

22 A. CORRECT.

23 Q. INCLUDING MS. CHABER WAS THERE THAT DAY, WASN'T  
24 SHE, SIR?

25 A. CORRECT.

26 Q. NOW, YOU TOLD US YESTERDAY THAT YOU WERE THE  
27 FOUNDING EDITOR, I BELIEVE, OF A JOURNAL CALLED TOBACCO  
28 CONTROL?

JUDITH ANN OSSA, CSR NO. 2310

0935

1 A. THAT'S CORRECT.

2 Q. AND IN RESPONSE TO A QUESTION FROM MR. CHABER, I  
3 WROTE DOWN THAT YOU STATED THAT, IN ADDITION TO THE  
4 SCIENTIFIC ARTICLES PUBLISHED IN THAT JOURNAL, THAT "THE  
5 JOURNAL TRIES TO BE HELPFUL TO NONSCIENTISTS WORKING IN THE  
6 FIELD OF TOBACCO CONTROL." IS THAT FAIR?

7 A. YES. COMMUNICATING INFORMATION ON WHAT'S  
8 HAPPENING IN TOBACCO AND HEALTH, REVIEWING BOOKS WRITTEN  
9 ABOUT TOBACCO AND HEALTH, PUBLISHING COMMENTARIES ON ISSUES  
10 IN TOBACCO AND HEALTH.

11 I THINK THOSE ARE SOME OF THE EXAMPLES THAT I  
12 GAVE YESTERDAY.

13 Q. OKAY. AT LEAST WHILE YOU WERE THE EDITOR OF  
14 TOBACCO CONTROL, THE ACTIVITIES OF THE JOURNAL WERE A LITTLE  
15 BROADER THAN THAT, WEREN'T THEY, SIR?

16 A. I DON'T KNOW WHAT YOU MEAN.

17 Q. WELL, ISN'T IT CORRECT, SIR, THAT -- LET ME ASK  
18 IT THIS WAY: AS PART OF YOUR WORK ON THAT JOURNAL, YOU  
19 BECAME INVOLVED IN A TASK FORCE THAT WAS CHARGED WITH  
20 CONDUCTING RESEARCH RELATED TO LAWSUITS AND LITIGATION  
21 AGAINST THE TOBACCO COMPANIES, DIDN'T YOU, SIR?

22 A. YOU DIDN'T STATE IT CORRECTLY.

23 Q. WHAT MISTAKE DID I MAKE?

24 A. MY INVOLVEMENT IN THAT PROJECT HAD NOTHING TO DO  
25 WITH MY ROLE WITH THE JOURNAL. IT WAS ENTIRELY SEPARATE.

26 Q. BUT YOU WERE INVOLVED IN A TASK FORCE WHOSE  
27 CHARGE WAS TO CONDUCT RESEARCH OR TO EVALUATE WHAT RESEARCH  
28 WAS NEEDED FOR USE IN CASES INVOLVING CLAIMS AGAINST THE

JUDITH ANN OSSA, CSR NO. 2310

0936

1 TOBACCO INDUSTRY; IS THAT CORRECT, SIR?

2 A. THAT'S CLOSE. THAT'S CORRECT.

3 Q. I BELIEVE THE GROUP WAS CALLED THE TOBACCO POLICY  
4 RESEARCH STUDY GROUP ON TOBACCO PRODUCTS; IS THAT CORRECT?

5 A. THAT'S RIGHT. THERE WAS A LARGE PROJECT WHICH  
6 WAS LOOKING AT THE NEED FOR RESEARCH IN DIFFERENT AREAS OF  
7 TOBACCO AND HEALTH. THERE WERE EIGHT OR NINE OR 10  
8 DIFFERENT TASK FORCES THAT WERE PUT TOGETHER, WORKING

9 GROUPS, TO LOOK AT DIFFERENT ASPECTS OF TOBACCO AND HEALTH.  
10 AND ONE OF THEM WAS ON CLEAN INDOOR AIR  
11 LEGISLATION. ONE OF THEM WAS ON PREVENTING YOUTH FROM  
12 BUYING CIGARETTES IN VIOLATION OF THE LAW. ONE OF THEM WAS  
13 ON REGULATING TOBACCO PRODUCTS. ONE OF THEM WAS ON  
14 ADVERTISING AND PROMOTION. AND ONE OF THEM WAS ON TOBACCO  
15 PRODUCT LIABILITY.

16 I WAS A MEMBER OF SEVERAL OF THOSE WORKING  
17 GROUPS. AND THE ONE ON TOBACCO PRODUCT LIABILITY IS ONE OF  
18 THOSE. I THINK THAT'S THE ONE YOU'RE REFERRING TO.

19 Q. OKAY. THE TASK FORCE GROUP THAT YOU WERE  
20 INVOLVED IN ON TOBACCO PRODUCT LIABILITY ISSUED A REPORT AT  
21 THE CONCLUSION OF ITS WORK; IS THAT CORRECT, SIR?

22 A. THAT'S CORRECT.

23 Q. MAYBE I THOUGHT IT WAS PART OF YOUR WORK ON THE  
24 JOURNAL OF TOBACCO CONTROL BECAUSE THAT REPORT WAS PUBLISHED  
25 IN A SPECIAL SUPPLEMENT TO THAT JOURNAL; IS THAT CORRECT,  
26 SIR?

27 A. THAT'S CORRECT. THE WAY IT HAPPENED WAS, ALL OF  
28 THE REPORTS FROM ALL THOSE DIFFERENT WORKING GROUPS, THE

JUDITH ANN OSSA, CSR NO. 2310

0937

1 EIGHT OR NINE OR 10 WORKING GROUPS, ALL OF THOSE REPORTS  
2 WERE PUBLISHED TOGETHER AS A SPECIAL SUPPLEMENT TO THE  
3 JOURNAL, TO GET INFORMATION OUT ABOUT WHAT KIND OF RESEARCH  
4 WE NEED TO THE RESEARCHERS WHO READ THE JOURNAL.

5 Q. AND THAT REPORT WAS PUBLISHED IN THE JOURNAL OF  
6 TOBACCO CONTROL?

7 A. AS A SPECIAL SUPPLEMENT, CORRECT.

8 Q. WERE YOU COAUTHOR ON THAT REPORT?

9 A. FROM THAT WORKING GROUP?

10 Q. YES, SIR.

11 A. YES.

12 Q. I BELIEVE YOU TOLD ME IN THE PAST THAT YOU  
13 REVIEWED THAT REPORT BEFORE IT WAS PUBLISHED; IS THAT  
14 CORRECT, SIR?

15 A. I'M SURE A COPY IN DRAFT FORM WAS SENT TO ME AND  
16 THE OTHER AUTHORS TO LOOK AT BEFORE IT WAS PROCESSED FOR  
17 PUBLICATION.

18 Q. YOU DID NOT RAISE ANY OBJECTIONS TO ANY OF THE  
19 RECOMMENDATIONS MADE IN THAT REPORT, DID YOU, SIR?

20 A. I DON'T RECALL.

21 Q. DO YOU RECALL ASKING ANY OF THE OTHER AUTHORS OR  
22 THE PARTIES INVOLVED IN THAT REPORT TO HAVE YOUR NAME TAKEN  
23 OFF THAT REPORT?

24 A. DO I RECALL ASKING FOR MY NAME TO BE TAKEN OFF?

25 Q. YES.

26 A. NO.

27 Q. YOU AND YOUR COAUTHORS DID MAKE A NUMBER OF  
28 RECOMMENDATIONS ABOUT RESEARCH THAT NEEDED TO BE DONE

JUDITH ANN OSSA, CSR NO. 2310

0938

1 RELATIVE TO LAWSUITS AGAINST THE TOBACCO COMPANIES, DIDN'T  
2 YOU, SIR?

3 A. I BELIEVE THERE WERE RECOMMENDATIONS IN THAT  
4 REPORT. I DON'T REMEMBER SPECIFICALLY WHAT THEY ARE.

5 Q. LET'S TALK ABOUT A COUPLE OF THOSE.

6 ONE OF THE THINGS THAT YOU AND YOUR COAUTHORS  
7 RECOMMENDED WAS THAT RESEARCH BE CONDUCTED ON HOW TO PICK  
8 JURORS IN CASES AGAINST THE TOBACCO COMPANIES; CORRECT?

9 A. I DON'T HAVE A COPY OF IT IN FRONT OF ME. IF  
10 YOU'RE TELLING ME THAT'S IN THERE, I ASSUME IT IS.

11 Q. WOULD YOU LIKE A COPY OF IT?

12 A. SURE.  
13 MR. FURR: I DON'T PLAN ON MARKING THIS, YOUR  
14 HONOR. HERE IS A COPY, IF YOU'D LIKE TO FOLLOW ALONG.  
15 THE COURT: LET ME JUST SAY FOR THE JURY'S  
16 BENEFIT -- I ALREADY SAID THIS TO COUNSEL --SO THE JURY WILL  
17 UNDERSTAND, IF ANYBODY IS GOING TO SHOW A DOCUMENT TO A  
18 WITNESS, YOU, THE LAWYER SHOWING THE DOCUMENT, MAY CHOOSE TO  
19 HAVE IT MARKED FOR IDENTIFICATION PURPOSES.  
20 ALSO, ANY OTHER LAWYER PRESENT MAY CHOOSE TO HAVE  
21 IT MARKED FOR IDENTIFICATION PURPOSES. IF I HEAR NOTHING,  
22 I'M JUST GOING TO ASSUME THAT THERE IS NO DESIRE ON  
23 ANYBODY'S PART TO HAVE IT MARKED FOR IDENTIFICATION.  
24 CAN WE HAVE THAT STIPULATION AS AN UNDERSTANDING  
25 THROUGHOUT THE COURSE OF THE TRIAL, SO THAT I DON'T NEED TO  
26 INTERJECT, AND I'LL RELY ON COUNSEL TO ASK FOR MARKINGS, IF  
27 THEY WANT THEM?

28 MS. CHABER: YES, YOUR HONOR.  
JUDITH ANN OSSA, CSR NO. 2310

0939

1 MR. FURR: YES, YOUR HONOR.  
2 MR. HARDY: YES, YOUR HONOR.  
3 MS. MASON: YES, YOUR HONOR.  
4 MR. ROSSE: YES, YOUR HONOR.  
5 MS. CHABER: I GUESS HE'S NOT ASKING.  
6 I WILL HAVE THIS MARKED, PLEASE.  
7 THE COURT: THAT'S FINE. AND THAT'S THE POINT.  
8 THROUGHOUT THE TRIAL, ANYBODY THAT WANTS TO HAVE  
9 SOMETHING MARKED THAT IS BEING SHOWN TO A WITNESS, IT WILL  
10 BE YOUR BURDEN TO SPEAK UP.  
11 SO THIS WILL BE MARKED AS WHAT NUMBER?  
12 MS. CHABER: YOUR HONOR, I ALSO WOULD ASK FOR A  
13 SIDEBAR. I BELIEVE WE HAVE SOME 352 ISSUES WITH RESPECT TO  
14 THIS.  
15 THE COURT: THAT MAY WELL BE. WE CAN HAVE A  
16 SIDEBAR.  
17 THAT DOESN'T PREVENT SOMEBODY FROM MARKING  
18 SOMETHING.  
19 MS. CHABER: NO. I WAS ADDING THAT.  
20 MR. FURR: I GAVE THE COURT MY COPY.  
21 THE COURT: YOU WANT TO HAVE A SIDEBAR NOW ON  
22 THIS; IS THAT IT?  
23 MS. CHABER: BEFORE IT'S USED, YES.  
24 THE COURT: OKAY. ALL RIGHT.  
25 MS. CHABER: WHAT DID IT GET MARKED AS?  
26 MR. FURR: 6222.  
27 (DOCUMENT MORE PARTICULARLY  
28 LISTED IN THE INDEX MARKED  
JUDITH ANN OSSA, CSR NO. 2310

0940

1 FOR IDENTIFICATION DEFENDANTS'  
2 EXHIBIT # 6222)  
3 (COURT AND COUNSEL CONFER OUTSIDE  
4 THE PRESENCE OF THE JURY)  
5 THE COURT: I JUST WANT TO DO A HOUSEKEEPING  
6 MATTER FOR A MINUTE.  
7 TATSUO, THAT LAST EXHIBIT WE HAD, IS THIS MY COPY  
8 OR IS THIS THE COURT'S COPY?  
9 THE CLERK: YOU HAVE IT.  
10 THE COURT: I HAVE IT.  
11 NOW, I GUESS WHAT I NEED IS A COPY OF THAT  
12 DOCUMENT WE WERE REFERRING TO NOW, WHICH IS 6222.  
13 IS THIS MY COPY?  
14 MR. FURR: THAT'S THE EVIDENTIARY COPY. "DR.

15 DAVIS" IS MARKED ON YOUR COPY.  
16 THE COURT: I JUST WANT A COPY. I DON'T CARE  
17 WHAT COPY I GET.  
18 I PREFER NOT TO HAVE THE ORIGINAL, BECAUSE I'D  
19 LIKE TO BE FREE TO MARK ON IT, IF I WANT.  
20 CAN I GET MY OWN COPY?  
21 MR. FURR: I ONLY HAD FOUR.  
22 MS. CHABER: YOU MEAN I'M NOT THE ONLY ONE  
23 THAT'S GUILTY OF THIS, YOUR, HONOR.  
24 MR. FURR: OH, NO, I'M GUILTY.  
25 THE COURT: LET ME JUST EMPHASIZE TO YOU ALL --  
26 I WOULDN'T USUALLY TAKE THE JURY'S TIME ON THIS, BUT WE HAVE  
27 A LOT OF DOCUMENTS HERE. AND IF WE DON'T GET THIS ORGANIZED  
28 RIGHT FROM THE START, IT'S GOING TO BE A MESS BEFORE WE'RE  
JUDITH ANN OSSA, CSR NO. 2310

0941

1 DONE.  
2 MR. FURR: I APOLOGIZE. I ONLY HAD FOUR.  
3 THEY'RE ALL DISTRIBUTED THROUGHOUT THE ROOM NOW.  
4 THE COURT: ALL RIGHT. WHY DON'T YOU --  
5 (ATTORNEYS CONFER)  
6 THE COURT: DO YOU WANT DR. DAVIS TO HAVE ONE  
7 THAT'S MARKED UP OR DO YOU WANT HIM TO HAVE THE OFFICIALLY  
8 MARKED EXHIBIT?  
9 WHY DON'T YOU GIVE ME THAT, IF HE DOESN'T MIND.  
10 I DON'T KNOW WHETHER HE MARKED ON IT. I'M HAPPY TO TAKE A  
11 MARKED-UP COPY. I WILL IGNORE IT, IF THAT IS NOT A PROBLEM.  
12 IF YOU PREFER THAT I NOT HAVE THAT COPY -- I  
13 WOULD ASSUME THAT YOU WOULD WANT TO SHOW THE WITNESS THE  
14 OFFICIALLY MARKED EXHIBIT.  
15 THE WITNESS: I JUST MADE SOME MARKS THAT I WAS  
16 HOPING TO RELY ON. I WOULD PREFER TO KEEP THE MARKED-UP  
17 ONE, IF I COULD.  
18 THE COURT: IF COUNSEL DOESN'T CARE, WE'LL GIVE  
19 YOU BACK THE MARKED-UP ONE.  
20 ALL RIGHT. LET'S GO.  
21 MR. FURR: Q. DR. DAVIS, LET ME ASK YOU TO TAKE  
22 A LOOK AT WHAT WE MARKED FOR IDENTIFICATION AS EXHIBIT  
23 6222.  
24 DO YOU HAVE THAT, SIR?  
25 A. YES.  
26 Q. THAT IS TITLED "REPORT OF THE TOBACCO POLICY  
27 RESEARCH STUDY GROUP ON TOBACCO LITIGATION," CORRECT, SIR?  
28 A. YES.

JUDITH ANN OSSA, CSR NO. 2310

0942

1 Q. AND THAT IS THE GROUP THAT YOU TOLD US A FEW  
2 MINUTES AGO THAT YOU WERE PART OF; CORRECT, SIR?  
3 A. CORRECT. ONE OF THE SEVERAL THAT I WAS PART OF;  
4 THAT'S CORRECT.  
5 Q. THIS WAS A PUBLICATION THAT WAS PUT OUT BY THE  
6 GROUP AT THE COMPLETION OF ITS WORK; CORRECT, SIR?  
7 A. YES.  
8 Q. YOU WERE LISTED AS RONALD M. DAVIS, ONE OF THE  
9 COAUTHORS OF THIS REPORT; CORRECT?  
10 A. YES.  
11 Q. LET ME ASK YOU TO TURN TO THE THIRD PAGE BACK,  
12 THE LEFT-HAND COLUMN, UNDER THE HEADING "JURY RESEARCH."  
13 YOU AND YOUR COAUTHORS WROTE THAT --  
14 MS. CHABER: YOUR HONOR, HE'S QUOTING FROM THE  
15 DOCUMENT.  
16 ARE WE OFFERING THIS INTO EVIDENCE?  
17 MR. FURR: NO, YOUR HONOR. I ALREADY ASKED HIM

18 THE SUBSTANCE OF THIS. HE DIDN'T REMEMBER.  
19 SO I'M REFRESHING HIS RECOLLECTION AS TO WHAT  
20 THEY WROTE.  
21 MS. CHABER: I DON'T BELIEVE THAT'S HOW ONE --  
22 THE COURT: IF YOU WANT TO ASK HIM TO READ A  
23 PORTION OF THE DOCUMENT AND ASK HIM IF IT REFRESHES HIS  
24 MEMORY, THEN YOU COULD ASK HIM WHETHER HIS MEMORY IS  
25 REFRESHED, AND THAT WILL GET YOU WHERE I THINK YOU ARE  
26 TRYING TO GO AND OBIVIATE THIS OBJECTION, I THINK.  
27 MS. CHABER: I MOVE THE DOCUMENT INTO EVIDENCE,  
28 YOUR HONOR.

JUDITH ANN OSSA, CSR NO. 2310

0943

1 THE COURT: LET ME JUST SAY ONE THING. THAT'S  
2 NOT PROPER.  
3 WHEN ONE LAWYER IS USING AND REFERRING TO A  
4 DOCUMENT, IT'S NOT PROPER FOR THE OTHER LAWYER TO INTERJECT  
5 AND MAKE AN OFFER. YOU DON'T HAVE ANY RIGHT TO OFFER  
6 ANYTHING INTO EVIDENCE UNLESS YOU ARE EXAMINING THE WITNESS  
7 AT THE TIME.  
8 SO IF YOU WANT TO OFFER SOMETHING INTO EVIDENCE,  
9 YOU CAN DO IT ON YOUR REDIRECT EXAMINATION, BUT NOT TO  
10 INTERRUPT THE OTHER SIDE'S EXAMINATION.  
11 MS. CHABER: JUST MY OBJECTION WAS THAT THAT'S  
12 IMPROPER REFRESHING OF RECOLLECTION.  
13 THE COURT: IT IS IMPROPER.  
14 MS. CHABER: THAT'S ALL.  
15 THE COURT: IT'S IMPROPER IN THE FORM THAT IT'S  
16 BEING DONE, WITHOUT PREJUDICE.  
17 I'M GOING TO SUSTAIN THAT OBJECTION, WITHOUT  
18 PREJUDICE TO YOUR GOING INTO THE AREA, BUT THE FORM OF IT.  
19 IT NEEDS TO BE DONE IN A MANNER SIMILAR TO WHAT I  
20 SUGGESTED.  
21 MR. FURR: YOUR HONOR, IF THERE IS NO OBJECTION,  
22 I WOULD OFFER EXHIBIT 6222 IN EVIDENCE.  
23 MS. CHABER: NO OBJECTION.  
24 THE COURT: THAT WILL SOLVE THE WHOLE PROBLEM.  
25 ALL RIGHT. THEN 6222 IS RECEIVED, AND THEN  
26 ANYBODY CAN READ FROM IT.  
27 (DOCUMENT MORE PARTICULARLY  
28 LISTED IN THE INDEX RECEIVED  
JUDITH ANN OSSA, CSR NO. 2310

0944

1 IN EVIDENCE AS DEFENDANTS'  
2 EXHIBIT # 6222)  
3 MR. FURR: Q. DR. DAVIS, YOU AND YOUR COAUTHORS  
4 WROTE --  
5 THE COURT: LET ME JUST ASK ONE OF THE LAWYERS:  
6 DO ANY OF YOU HAVE A COPY OF THIS THAT ISN'T MARKED UP THAT  
7 I COULD JUST SWITCH WITH, SO I COULD HAVE A COPY, OR DO YOU  
8 ALL HAVE MARKED-UP COPIES?  
9 YOU ALL HAVE MARKED UP-COPIES.  
10 DURING THE RECESS, WOULD SOMEBODY GET ME A COPY  
11 OF THIS? OKAY.  
12 MR. FURR: Q. DR. DAVIS, IS IT CORRECT THAT  
13 YOU AND YOUR COAUTHORS WROTE THAT:  
14 "ATTORNEYS IN UNITED STATES COURTS ARE ENTITLED  
15 TO DISMISS A CERTAIN NUMBER OF POTENTIAL JURORS  
16 WITHOUT GIVING SPECIFIC REASONS. THUS ATTORNEYS  
17 WHO BRING TOBACCO LITIGATION WOULD BE AIDED BY IN  
18 DEPTH MOCK JURY STUDIES THAT PINPOINT WHAT KINDS  
19 OF JURORS ARE MOST LIKELY TO BE PREDISPOSED TO  
20 PREFER A STORY INVOLVING THE DEFENDANTS' FAULT,

21 AS WELL AS THOSE MOST LIKELY TO BLAME THE  
22 PLAINTIFFS. THESE STUDIES COULD ALSO SHED LIGHT  
23 ON THE MOST EFFECTIVE WAY TO PRESENT ARGUMENTS AS  
24 TO TURN THE JURY AGAINST THE TOBACCO COMPANIES"?  
25 THAT'S WHAT YOU AND YOUR COAUTHORS WROTE, ISN'T

26 IT, SIR?

27 A. THAT'S WHAT IT SAYS.

28 I THINK THE POINT HERE IS THAT THE TOBACCO  
JUDITH ANN OSSA, CSR NO. 2310

0945

1 COMPANIES DO THIS KIND OF RESEARCH ROUTINELY, AND PERHAPS  
2 THE OTHER SIDE OUGHT TO DO SIMILAR RESEARCH.

3 MS. CHABER: YOUR HONOR, MOVE TO STRIKE  
4 EVERYTHING AFTER "THAT'S WHAT IT SAYS."

5 THE COURT: I'LL LEAVE IN THE PORTION OF THE  
6 ANSWER "THAT'S WHAT IT SAYS."

7 I'LL STRIKE THE BALANCE AS NOT RESPONSIVE TO THE  
8 QUESTION. YOU MUST DISREGARD THE BALANCE.

9 MR. FURR: Q. LET ME TALK TO YOU A LITTLE  
10 MORE, DR. DAVIS, ABOUT YOUR GOALS FOR TOBACCO LITIGATION AND  
11 WHY YOU TESTIFY IN THESE CASES, SIR.

12 ONE OF THE REASONS THAT YOU ARE IN FAVOR OF CASES  
13 LIKE THIS ONE IS THAT YOU BELIEVE THAT LITIGATION AGAINST  
14 THE TOBACCO COMPANIES FORCES THE COMPANIES TO SPEND LARGE  
15 SUMS OF MONEY TO DEFEND THEMSELVES; IS THAT CORRECT, SIR?

16 A. YOU HAVE A PREMISE TO YOUR QUESTION WHICH I MIGHT  
17 TAKE ISSUE WITH.

18 MAYBE, JUDGE, YOU CAN INSTRUCT ME, BUT HE MADE AN  
19 ASSUMPTION AT THE BEGINNING OF HIS QUESTION WHICH I TAKE  
20 ISSUE WITH.

21 THE COURT: OKAY. YOU CAN EXPLAIN THAT.

22 THE WITNESS: YOU SAID, MR. FURR, THAT I'M IN  
23 FAVOR OF CASES LIKE THIS ONE. I DON'T KNOW WHAT YOU BASE  
24 THAT ON.

25 I DON'T KNOW THAT I CAN COMFORTABLY ANSWER YOUR  
26 QUESTION WITHOUT DEALING WITH THIS ISSUE THAT YOU SAID AT  
27 THE BEGINNING, THAT I'M IN FAVOR OF CASES LIKE THIS ONE.

28 MR. FURR: Q. DR. DAVIS, YOU ARE IN FAVOR OF  
JUDITH ANN OSSA, CSR NO. 2310

0946

1 CASES, LITIGATION, PERSONAL INJURY ACTIONS AGAINST THE  
2 TOBACCO COMPANIES BECAUSE YOU BELIEVE THAT IT FORCES THE  
3 COMPANIES TO SPEND LARGE SUMS OF MONEY TO DEFEND THEMSELVES  
4 IN COURT; CORRECT, SIR?

5 A. I THINK YOU'RE MISCHARACTERIZING MY OPINION ON  
6 THIS.

7 I'D BE HAPPY TO EXPLAIN WHAT MY OPINION IS ON  
8 THIS. I'M JUST WANT TO MAKE SURE THAT I'M NOT CUT OFF WHEN  
9 I'M HALFWAY THROUGH.

10 Q. DR. DAVIS, HAVE I CUT YOU OFF, SIR?

11 THE COURT: THAT'S BETWEEN THE TWO OF YOU.  
12 LET'S NOT GO ON IN THIS WAY. LET'S GO ON TO THE SUBSTANTIVE  
13 QUESTIONS.

14 MR. FURR: Q. SO, SIR, COULD YOU ANSWER THE  
15 QUESTION, PLEASE.

16 A. COULD YOU PLEASE REPEAT IT.

17 Q. DR. DAVIS, YOU ARE IN FAVOR OF LITIGATION AGAINST  
18 THE TOBACCO COMPANIES IN CASES LIKE THIS CASE BECAUSE YOU  
19 BELIEVE IT FORCES THE COMPANIES TO SPEND LARGE SUMS OF MONEY  
20 TO DEFEND THEMSELVES?

21 A. WELL, LET ME GIVE YOU AN ANSWER, MR. FURR, AND  
22 YOU CAN TELL ME WHETHER YOU THINK IT'S RESPONSIVE. I'LL TRY  
23 TO MAKE IT RESPONSIVE.

24 I'VE DISCUSSED WITH YOU IN THE PAST THAT THERE  
25 ARE BENEFITS TO TOBACCO PRODUCT LITIGATION. ONE OF THE  
26 BENEFITS IS THAT IT DOES -- IT DOES LEAD TO CIGARETTE  
27 COMPANIES SPENDING MONEY IN THESE CASES, WHICH ULTIMATELY  
28 INCREASES THE PRICE OF CIGARETTES, WHICH IN TURN REDUCES

JUDITH ANN OSSA, CSR NO. 2310

0947

1 SMOKING BY CHILDREN.

2 SO THAT IS WHAT I HAD REFERRED TO IN THE PAST AS  
3 ONE OF THE BENEFITS OF TOBACCO PRODUCT LIABILITY CASES.

4 Q. SO TO BE CLEAR, DOCTOR, ONE OF THE BENEFITS OF  
5 THIS TYPE OF CASE IS TO FORCE THESE COMPANIES TO SPEND LARGE  
6 SUMS OF MONEY TO DEFEND THEMSELVES SO THAT THEY HAVE TO  
7 RAISE THE PRICES OF CIGARETTES FOR PERSONS WHO CHOOSE TO  
8 SMOKE?

9 A. THAT'S SIMILAR TO WHAT I SAID. I THINK THE FOCUS  
10 WAS ON RAISING THE PRICE OF CIGARETTES TO REDUCE  
11 CONSUMPTION, ESPECIALLY BY CHILDREN, WHO ARE MORE SENSITIVE  
12 TO PRICE THAN ANYBODY ELSE.

13 Q. IN OTHER WORDS, DR. DAVIS, YOU BELIEVE THAT  
14 PRODUCT LIABILITY ACTIONS INVOLVING INDIVIDUAL PLAINTIFFS  
15 LIKE MRS. WHITELEY ARE IMPORTANT BECAUSE THEY ARE OF  
16 ASSISTANCE TO YOU IN YOUR INTEREST IN TOBACCO CONTROL?

17 A. I THINK THE WAY I HAVE EXPLAINED IT IN THE PAST,  
18 MR. FURR, WHICH I'LL TRY AND DO AGAIN TODAY, IS THAT THERE  
19 ARE A NUMBER OF BENEFITS FROM TOBACCO LAWSUITS. ONE IS THE  
20 EFFECT ON PRICE. ANOTHER IS TO GET TOBACCO COMPANIES TO  
21 STOP DOING BAD THINGS. ANOTHER IS TO PAY DAMAGES TO PEOPLE  
22 WHO HAVE BEEN HARMED BY CIGARETTE COMPANIES.

23 I POINTED OUT THAT THERE ARE A NUMBER OF BENEFITS  
24 TO LAWSUITS LIKE THIS ONE, AND I'VE NOW JUST MENTIONED THREE  
25 OF THEM.

26 Q. DR. DAVIS, DID YOU JUST TESTIFY THAT, IN YOUR  
27 OPINION, ONE OF THE BENEFITS OF CASES LIKE THIS ARE TO FORCE  
28 THE COMPANIES TO PAY DAMAGES TO PEOPLE THAT HAVE BEEN

JUDITH ANN OSSA, CSR NO. 2310

0948

1 INJURED BY USING THE PRODUCT?

2 A. TO PAY DAMAGES TO THE PARTIES THAT IT HAS  
3 INJURED.

4 Q. DR. DAVIS, LET ME ASK YOU TO TURN TO THE LAST  
5 PAGE OF EXHIBIT 6222, THE CONCLUSION SECTION.

6 IN FACT, DR. DAVIS, WHAT YOU AND YOUR COAUTHORS  
7 WROTE --

8 JUROR NO. 14: YOUR HONOR, WE ARE HAVING A HARD  
9 TIME SEEING THIS.

10 THE COURT: THANK YOU.

11 JUROR NO. 14: TURN THE LIGHTS OFF.

12 THE COURT: THE JURORS ARE SAYING IF WE TURNED  
13 OFF THE LIGHTS, THEY'D BE ABLE TO READ THE SCREEN BETTER.

14 JUROR NO. 15: IT'S TOTALLY BLURRED.

15 THE COURT: NOW, THAT'S A GOOD EXAMPLE OF WHY I  
16 REALLY OUGHT TO GIVE YOU THE ORIGINAL, BECAUSE THAT ONE HAS  
17 SOME MARKINGS ON IT THAT MAKE IT MORE DIFFICULT TO READ. SO  
18 I WILL GIVE IT TO YOU.

19 MS. CHABER: I WOULD OBJECT TO THE MARKINGS,  
20 YOUR HONOR. ARGUMENTATIVE.

21 THE COURT: THE MARKINGS ARE NOT PART OF THE  
22 COURT EXHIBIT.

23 MS. CHABER: THANK YOU.

24 MR. FURR: Q. IN FACT, DR. DAVIS, WHAT YOU AND  
25 YOUR COAUTHORS WROTE WAS THAT:

26 "TOBACCO LITIGATION RESEARCH HAS BEEN AND

27 CONTINUES TO BE UNDERFUNDED, LARGELY BECAUSE OF A  
28 WIDESPREAD AVERSION TO PERSONAL INJURY LITIGATION  
JUDITH ANN OSSA, CSR NO. 2310

0949

1 AMONG LIKELY FUNDING SOURCES. MUCH USEFUL  
2 TOBACCO LITIGATION, HOWEVER, BOTH OFFENSIVE AND  
3 DEFENSIVE, HAVE NOTHING TO DO WITH PERSONAL  
4 INJURIES. FURTHERMORE, EVEN PRODUCT LIABILITY  
5 LITIGATION IS NOT BEING URGED BECAUSE IT IS THE  
6 WAY TO COMPENSATE CONSUMERS, BUT TO ADVANCE  
7 TOBACCO CONTROL GOALS."  
8 CORRECT, SIR?

9 A. THAT IS WHAT IT SAYS, YES.

10 Q. DR. DAVIS, LET ME TURN TO ANOTHER TOPIC.  
11 I WANT TO ASK YOU SOME QUESTIONS REGARDING THE  
12 DEFINITION OF "ADDICTION" IN CERTAIN SURGEON GENERAL'S  
13 REPORTS AND SMOKING BEHAVIOR.

14 DR. DAVIS, IS IT CORRECT, SIR, THAT IN 1964, THE  
15 SURGEON GENERAL DID CONCLUDE THAT SMOKING WAS BETTER  
16 DESCRIBED AS HABITUATING THAN AS ADDICTIVE?

17 A. THAT'S CORRECT.

18 Q. NOW, WHEN THE SURGEON GENERAL DETERMINED IN 1964  
19 TO DESCRIBE SMOKING AS A HABIT AND NOT AN ADDICTION, THE  
20 SURGEON GENERAL WAS USING THE DEFINITION OF "ADDICTION" THAT  
21 THE WORLD HEALTH ORGANIZATION WAS USING; IS THAT CORRECT,  
22 SIR?

23 A. YES.

24 Q. AND AT THAT TIME, THE WORLD HEALTH ORGANIZATION  
25 HAD DEFINITIONS FOR BOTH DRUGS OF ADDICTION AND DRUGS THAT  
26 IT DESCRIBED AS HABITUATING; IS THAT CORRECT, SIR?

27 A. YES.

28 Q. THE WORLD HEALTH ORGANIZATION DEFINED DRUGS OF  
JUDITH ANN OSSA, CSR NO. 2310

0950

1 ADDICTION BY USING A NUMBER OF CHARACTERISTICS; IS THAT  
2 CORRECT, SIR?

3 A. YES.

4 Q. THOSE CHARACTERISTICS INCLUDED:  
5 "AN OVERPOWERING DESIRE OR NEED TO CONTINUE  
6 TAKING THE DRUG AND TO OBTAIN IT BY ANY MEANS; A  
7 TENDENCY TO INCREASE THE DOSE; A PSYCHIC OR  
8 PSYCHOLOGICAL AND GENERALLY A PHYSICAL DEPENDENCE  
9 ON THE EFFECTS OF THE DRUG;" AND "DETRIMENTAL  
10 EFFECT ON THE INDIVIDUAL AND ON SOCIETY."  
11 IS THAT CORRECT, SIR?

12 A. THAT SOUNDS CORRECT.

13 Q. AS WE MENTIONED, THE WORLD HEALTH ORGANIZATION AT  
14 THAT TIME ALSO HAD A DEFINITION FOR DRUGS OF HABITUATION;  
15 CORRECT?

16 A. YES.

17 Q. AND THE WORLD HEALTH ORGANIZATION DEFINED A  
18 NUMBER OF CHARACTERISTICS OF HABITUATING DRUGS, INCLUDING:  
19 "A DESIRE (BUT NOT A COMPULSION) TO CONTINUE  
20 TAKING THE DRUG FOR THE SENSE OF IMPROVED  
21 WELL-BEING WHICH IT ENGENDERS; LITTLE OR NO  
22 TENDENCY TO INCREASE THE DOSE; SOME DEGREE OF  
23 PSYCHIC DEPENDENCE ON THE EFFECT OF THE DRUG, BUT  
24 ABSENCE OF PHYSICAL DEPENDENCE AND HENCE OF AN  
25 ABSTINENCE SYNDROME; DETRIMENTAL EFFECTS, IF ANY,  
26 PRIMARILY ON THE INDIVIDUAL."

27 DOES THAT SOUND CORRECT TO YOU, SIR?

28 A. YES.

JUDITH ANN OSSA, CSR NO. 2310



0951

1 Q. IN APPLYING THOSE TWO DEFINITIONS OF ADDICTING  
2 DRUGS VERSUS HABITUATING DRUGS, THE SURGEON GENERAL  
3 CONCLUDED THAT SMOKING AND NICOTINE WAS BETTER DESCRIBED AS  
4 AN HABITUATING DRUG THAN AS AN ADDICTING DRUG; CORRECT?

5 A. CORRECT.

6 Q. IN FACT, THE SURGEON GENERAL CONCLUDED THAT:  
7 "IN MEDICAL AND SCIENTIFIC TERMINOLOGY, THE  
8 PRACTICE OF SMOKING SHOULD BE LABELED HABITUATING  
9 TO DISTINGUISH IT CLEARLY FROM ADDICTION, SINCE  
10 THE BIOLOGICAL EFFECTS OF TOBACCO, LIKE COFFEE  
11 AND OTHER CAFFEINE-CONTAINING BEVERAGES, BETEL  
12 MORSEL CHEWING AND THE LIKE, ARE NOT COMPARABLE  
13 TO THOSE PRODUCED BY MORPHINE, ALCOHOL,  
14 BARBITURATES, AND MANY OTHER POTENT ADDICTING  
15 DRUGS."

16 IS THAT CORRECT, SIR?

17 A. THAT SOUNDS RIGHT. IF YOU WANT TO SHARE IT WITH  
18 ME, I'D BE HAPPY TO SPEAK TO THE SPECIFICS OF IT.

19 MS. CHABER: YOUR HONOR, I WOULD JUST -- HE'S  
20 READING FROM THE SURGEON GENERAL'S REPORT.

21 I DON'T BELIEVE IT'S BEEN MARKED OR IDENTIFIED.

22 THE COURT: WELL, HE'S ASKING HIM WHETHER THE  
23 WITNESS HAS KNOWLEDGE THAT THAT'S WHAT THE REPORT SAYS.

24 I DON'T THINK HE HAS TO MARK IT FOR THAT  
25 PURPOSE. HE'S NOT SHOWING IT TO HIM.

26 MR. FURR: Q. DR. DAVIS, YOU ARE FAMILIAR WITH  
27 THE TERM "PSYCHOACTIVE" AS USED TO DESCRIBE THE PROPERTIES  
28 OF A SUBSTANCE, AREN'T YOU, SIR?

JUDITH ANN OSSA, CSR NO. 2310

0952

1 A. YES. I THINK I USED THAT TERM YESTERDAY.

2 Q. WOULD YOU EXPLAIN TO THE JURY WHAT "PSYCHOACTIVE"  
3 MEANS.

4 A. WELL, I THINK A GOOD WAY OF EXPLAINING IT FOR  
5 PEOPLE TO UNDERSTAND IT IS AS I DESCRIBED IT YESTERDAY, THAT  
6 IT AFFECTS -- A PSYCHOACTIVE DRUG WOULD BE A DRUG THAT  
7 AFFECTS CHEMICALS OF THE BRAIN AND THE CENTRAL NERVOUS  
8 SYSTEM.

9 Q. SIR, IS IT ALSO FAIR TO SAY A PSYCHOACTIVE DRUG  
10 IS A DRUG THAT HAS THE ABILITY TO CHANGE OR ALTER SOMEONE'S  
11 MOODS OR EMOTIONS?

12 A. THAT WOULD BE A COMMON CHARACTERISTIC OF A  
13 PSYCHOACTIVE DRUG.

14 Q. WHEN THE SURGEON GENERAL DESCRIBED SMOKING AND  
15 NICOTINE AS A HABITUATING DRUG IN 1964, IT WAS ALREADY KNOWN  
16 THAT SMOKING AND NICOTINE WERE PSYCHOACTIVE, WASN'T IT, SIR?

17 A. I BELIEVE SO. I BELIEVE THERE WAS SOME EVIDENCE  
18 ABOUT ITS PSYCHOACTIVITY.

19 Q. DR. DAVIS, YOU'RE FAMILIAR WITH WHAT IT MEANS TO  
20 USE A SUBSTANCE COMPULSIVELY, AREN'T YOU, SIR?

21 A. YES.

22 Q. AND ONE OF THE MEANINGS OF "COMPULSIVE USE" AS  
23 THAT PHRASE IS USED IN THE SURGEON GENERAL'S REPORTS IS TO  
24 CONTINUE TO USE A SUBSTANCE EVEN WHEN THE USER KNOWS THAT  
25 THERE'S GOOD REASON TO STOP USING THE SUBSTANCE; IS THAT  
26 CORRECT, SIR?

27 A. YES.

28 Q. AND WHEN THE SURGEON GENERAL DESCRIBED SMOKING

JUDITH ANN OSSA, CSR NO. 2310

0953

1 AND NICOTINE AS A HABIT AND NOT AN ADDICTION IN 1964, IT WAS  
2 ALREADY KNOWN THAT SOME SMOKERS SMOKED COMPULSIVELY, WASN'T

3 IT, SIR?  
4 A. I IMAGINE IT WAS.  
5 Q. YOU'RE ALSO FAMILIAR WITH THE TERM "REINFORCING"  
6 AS IT RELATES TO DRUG USAGE, AREN'T YOU, SIR?  
7 A. YES.  
8 Q. WOULD YOU EXPLAIN TO THE JURY WHAT "REINFORCING"  
9 MEANS?  
10 A. IT MEANS THAT THE DRUG ACTS AS A REINFORCER FOR  
11 DRUG-SEEKING BEHAVIOR. IN OTHER WORDS, YOU TAKE THE DRUG  
12 AND THE DRUG HAS EFFECTS THAT MOTIVATE YOU TO CONTINUE TO  
13 SEEK THE DRUG.  
14 Q. AND AGAIN, WHEN THE SURGEON GENERAL DESCRIBED  
15 SMOKING AND NICOTINE AS A HABIT AND NOT AN ADDICTION IN  
16 1964, IT WAS ALREADY KNOWN THAT NICOTINE, AS A  
17 PHARMACOACTIVE SUBSTANCE, REINFORCED SMOKING BEHAVIOR,  
18 WASN'T IT, SIR?  
19 A. I DON'T RECALL THE EXACT TIME FRAME AT WHICH  
20 IMPORTANT EVIDENCE ON REINFORCEMENT BECAME AVAILABLE, SO I  
21 CAN'T REALLY ANSWER THAT.  
22 Q. DO YOU HAVE A COPY OF THE 1964 REPORT UP THERE,  
23 SIR?  
24 A. NO, I DON'T.  
25 Q. DR. DAVIS, LET ME HAND YOU A COPY OF THE 1964  
26 SURGEON GENERAL'S REPORT, WHICH IS DEFENDANTS' EXHIBIT  
27 3284.  
28 MS. CHABER: I DIDN'T HEAR THE NUMBER.  
JUDITH ANN OSSA, CSR NO. 2310

0954

1 MR. FURR: 3284.  
2 THE COURT: WHAT BINDER, PLEASE?  
3 MS. CHABER: THE ENTIRE DOCUMENT IS MARKED?  
4 THE COURT: WHAT BINDER IS THAT IN?  
5 MR. FURR: SORRY, YOUR HONOR. WE DON'T HAVE  
6 THAT TODAY. WE'LL HAVE THEM TOMORROW. I PROMISE YOU.  
7 Q. DR. DAVIS, LET ME ASK YOU TO TAKE A LOOK AT PAGE  
8 354 OF THE 1964 REPORT.  
9 A. AM I ALLOWED TO DO THAT?  
10 Q. YES. IF THE JUDGE SAYS YOU ARE.  
11 A. 350 WHAT?  
12 Q. FOUR.  
13 A. I FOUND IT.  
14 Q. SIR, IF YOU WOULD LOOK ON THAT PAGE, RIGHT UNDER  
15 "SUMMARY," THE SURGEON GENERAL WROTE IN 1964 THAT:  
16 "THE HABITUAL USE OF TOBACCO IS RELATED  
17 PRIMARILY TO PSYCHOLOGICAL AND SOCIAL DRIVES,  
18 REINFORCED AND PERPETUATED BY THE PHARMACOLOGICAL  
19 ACTIONS OF NICOTINE ON THE CENTRAL NERVOUS  
20 SYSTEM, THE LATTER BEING INTERPRETED SUBJECTIVELY  
21 EITHER AS STIMULANT OR TRANQUILLIZING DEPENDENT  
22 UPON THE INDIVIDUAL RESPONSE."  
23 CORRECT, SIR?  
24 A. YES. THAT'S WHAT IT SAYS.  
25 Q. SO, DR. DAVIS, YOU WOULD AGREE WITH ME THAT, IN  
26 1964, WHEN THE SURGEON GENERAL DESCRIBED SMOKING AND  
27 NICOTINE AS A HABITUATING SUBSTANCE AS OPPOSED TO AN  
28 ADDICTING SUBSTANCE, IT WAS ALREADY KNOWN THAT NICOTINE  
JUDITH ANN OSSA, CSR NO. 2310

0955

1 REINFORCED SMOKING BEHAVIOR; CORRECT, SIR?  
2 A. WELL, IT DOES USE THE TERM "REINFORCED," BUT I  
3 DON'T RECALL WHETHER THE CONCEPT OF DRUG-REINFORCING  
4 BEHAVIOR WAS USED BACK THEN AS IT IS NOW. I DON'T KNOW  
5 WHETHER THIS IS THE LAY USE OF THE TERM "REINFORCED" OR THE

6 MORE TECHNICAL TERM OF DRUG REINFORCEMENT BEHAVIOR.

7 SO I REALLY CAN'T ANSWER YOUR QUESTION.

8 Q. AM I CORRECT, DOCTOR, THAT THE LANGUAGE IN THE  
9 '64 REPORT IS:

10 "THE HABITUAL USE OF TOBACCO IS RELATED  
11 PRIMARILY TO PSYCHOLOGICAL AND SOCIAL DRIVES, REINFORCED AND  
12 PERPETUATED BY THE PHARMACOLOGICAL ACTIONS OF NICOTINE"?

13 A. YOU READ IT CORRECTLY. I WOULD GIVE YOU THE SAME  
14 ANSWER. IT USES THE TERM "REINFORCED," BUT I DON'T KNOW IF  
15 THAT'S USED IN THE LAY TERMINOLOGY OR IN A MORE TECHNICAL  
16 SORT OF WAY, LIKE WE DID IN THE 1988 SURGEON GENERAL'S  
17 REPORT.

18 Q. BUT THE 1964 SURGEON GENERAL'S REPORT IS ALSO A  
19 TECHNICAL, SCIENTIFIC DOCUMENT, NOT A LAY DOCUMENT; CORRECT,  
20 SIR?

21 A. SURE, BUT TECHNICAL TERMS CHANGE OVER TIME. SOME  
22 TERMS ACQUIRE NEW MEANING.

23 SOMETIMES WORDS THAT HAVE A LAY MEANING IN ONE  
24 PERIOD OF TIME DEVELOP A DIFFERENT MEANING IN LATER PERIODS  
25 OF TIME.

26 Q. IN FACT, IT'S A VERY APT COMMENT, BECAUSE  
27 "ADDICTION" IS A TERM THAT HAS ACQUIRED NEW MEANING OVER  
28 TIME; CORRECT, SIR?

JUDITH ANN OSSA, CSR NO. 2310

0956

1 A. WELL, THERE IS A DISTINCTION BETWEEN HABITUATION  
2 AND ADDICTION IN 1964 THAT YOU HAVE BEEN REFERRING TO. THAT  
3 DISTINCTION WAS DROPPED LATER THAT YEAR BY THE WORLD HEALTH  
4 ORGANIZATION.

5 SO IF THAT IS YOUR POINT, YES, THAT'S WHAT  
6 HAPPENED IN 1964.

7 Q. THAT IS NOT MY POINT, SIR.  
8 MY POINT IS THAT, IN 1964, THERE WAS A CERTAIN  
9 DEFINITION OF "ADDICTION" USED BY THE WORLD HEALTH  
10 ORGANIZATION THAT YOU AND I JUST REVIEWED; CORRECT, SIR?

11 A. YES.

12 Q. BY 1988, WHEN YOU WERE THE DIRECTOR OF THE OFFICE  
13 OF SMOKING AND HEALTH, A DIFFERENT DEFINITION OF THE TERM  
14 "ADDICTION" WAS BEING USED; CORRECT, SIR?

15 A. YES.

16 Q. NOW, BETWEEN 1964 AND 1987, THE SURGEON GENERAL  
17 CONTINUED TO DESCRIBE SMOKING AND NICOTINE AS A HABITUATING  
18 SUBSTANCE; IS THAT CORRECT, SIR?

19 A. BETWEEN 1964 AND WHAT YEAR?

20 Q. 1987.

21 A. WELL, I DON'T KNOW ABOUT THAT.

22 SEE, PART OF THE PROBLEM WITH TERMINOLOGY IS THAT  
23 PEOPLE GO BACK AND FORTH WITH SOME TERMS. YOU STILL HEAR  
24 PEOPLE ALL THE TIME REFERRING TO SMOKING HABITS OR TOBACCO  
25 HABITS, AND YOU MAY HEAR PEOPLE WHO WORK IN THE ADDICTION  
26 FIELD REFERRING TO TOBACCO HABITS.

27 THAT DOESN'T MEAN THAT THEY THINK IT'S A HABIT  
28 LIKE TAKING A SHOWER OR EATING CHOCOLATE. THAT DOESN'T MEAN

JUDITH ANN OSSA, CSR NO. 2310

0957

1 THAT THEY AGREE WITH THE 1964 DEFINITION. IT'S JUST,  
2 UNFORTUNATELY, PART OF THE WAY SOME PEOPLE SPEAK.

3 BUT I THINK SMOKING WAS REGARDED AS AN ADDICTION  
4 WELL BEFORE 1988. THERE WAS DISCUSSION OF ITS  
5 DEPENDENCE-PRODUCING EFFECTS IN THE 1979 SURGEON GENERAL'S  
6 REPORT. THE HEAD OF THE NATIONAL INSTITUTE OF DRUG ABUSE  
7 CALLED IT AN ADDICTION AND A DEPENDENCE IN THE EARLY 1980S.

8 AND THAT WAS AN IMPORTANT FEDERAL OFFICIAL WHO

9 WORKS CLOSELY WITH THE SURGEON GENERAL IN TALKING ABOUT AN  
10 ADDICTION, TOBACCO ADDICTION OR A TOBACCO DEPENDENCE.

11 SO THE DEFINITION WASN'T CHANGED IN 1988. I  
12 THINK THAT'S WHAT YOU'RE IMPLYING, THAT PEOPLE WERE USING  
13 THE TERM "HABIT" UP UNTIL 1988.

14 NO, THAT'S NOT TRUE.

15 Q. DOCTOR, WOULD YOU IDENTIFY FOR THE JURY, PLEASE,  
16 THE SURGEON GENERAL'S REPORT BETWEEN 1964 AND 1987 WHICH  
17 FOUND THAT SMOKING SHOULD BE DESCRIBED AS AN ADDICTION AS  
18 OPPOSED TO A HABIT?

19 A. WELL, I CAN FIND YOU SOMETHING IN THE 1979 REPORT  
20 THAT COMES PRETTY CLOSE, THAT TALKS ABOUT SUBSTANTIAL  
21 EVIDENCE THAT INDICATES THAT SMOKING IS A DEPENDENCE.

22 Q. THAT WASN'T MY QUESTION, SIR.

23 A. WELL, I THINK IT IS, BECAUSE "DEPENDENCE" AND  
24 "ADDICTION" ARE USED SYNONYMOUSLY.

25 Q. DOCTOR, MY QUESTION IS: CAN YOU IDENTIFY FOR US  
26 THE SURGEON GENERAL'S REPORT BETWEEN 1964 AND 1987 WHICH  
27 STATES THAT SMOKING SHOULD NO LONGER BE DESCRIBED AS A HABIT  
28 BUT HENCEFORTH SHOULD BE DESCRIBED AS AN ADDICTION?

JUDITH ANN OSSA, CSR NO. 2310

0958

1 A. USING THE EXACT WORDS THAT YOU JUST USED?

2 Q. THE CONCEPT, DOCTOR.

3 A. IF YOU ARE TALKING ABOUT THE CONCEPT, I'D HAVE TO  
4 DISAGREE WITH YOU.

5 I THINK THE 1979 REPORT SPOKE VERY CLEARLY -- I  
6 COULD READ IT TO YOU, IF YOU WANT TO INTRODUCE IT AS  
7 EVIDENCE. IT SPOKE VERY CLEARLY THAT THERE IS SUBSTANTIAL  
8 EVIDENCE THAT SMOKING HAS PHARMACOLOGIC EFFECTS AND HAS  
9 DEPENDENCE-PRODUCING BEHAVIOR.

10 Q. THE 1979 SURGEON GENERAL'S REPORT LABELED SMOKING  
11 AND NICOTINE AS AN ADDICTION?

12 A. I JUST SAID IT DIDN'T COME OUT AND STATE  
13 "CIGARETTE SMOKING IS AN ADDICTION." IT USED THE TERM  
14 "DEPENDENCE," WHICH WE USE SYNONYMOUSLY. THOSE TWO TERMS  
15 WE USE INTERCHANGEABLY.

16 Q. WE'LL TALK ABOUT THAT, DOCTOR.

17 NOW, THINGS DID CHANGE IN 1988 WITH RESPECT TO  
18 THE WAY SMOKING AND NICOTINE WERE DESCRIBED BY THE SURGEON  
19 GENERAL; CORRECT?

20 A. WELL, MR. FURR, I HAVE TO -- I WANT TO BE  
21 HELPFUL. I WANT TO ANSWER YOUR QUESTIONS, BUT I WANT TO  
22 UNDERSTAND THEM ALSO.

23 AND WHEN YOU REFER TO THE SURGEON GENERAL, WE ARE  
24 TALKING ABOUT A SURGEON GENERAL'S REPORT THAT REPRESENTS THE  
25 OPINIONS OF FEDERAL AGENCIES.

26 IT'S NOT REALLY JUST THE SURGEON GENERAL'S  
27 OPINION OR HIS REPORT. IT'S A REPORT FROM THE DEPARTMENT OF  
28 HEALTH AND HUMAN SERVICES.

JUDITH ANN OSSA, CSR NO. 2310

0959

1 SO I WANT TO UNDERSTAND WHAT YOU MEAN WHEN YOU  
2 SAY: DID THE SURGEON GENERAL SAY THIS OR THAT?

3 Q. DR. DAVIS, IN 1988, THE SURGEON GENERAL'S REPORT  
4 DESCRIBED SMOKING AS AN ADDICTING BEHAVIOR; CORRECT?

5 A. YES.

6 Q. YOU WERE THE DIRECTOR OF THE OFFICE OF SMOKING  
7 AND HEALTH IN THAT YEAR, SIR; CORRECT?

8 A. YES.

9 Q. I BELIEVE YOU HAVE TOLD US THAT YOU HAD ULTIMATE  
10 RESPONSIBILITY FOR THE QUALITY OF CERTAIN SURGEON GENERAL'S  
11 REPORTS, INCLUDING THE 1988 REPORT; ISN'T THAT CORRECT, SIR?

12 A. THAT'S CORRECT.  
13 Q. IN 1988, WHEN THE SURGEON GENERAL FOUND SMOKING  
14 TO BE ADDICTIVE, THE SURGEON GENERAL USED A DIFFERENT  
15 DEFINITION FOR ADDICTION THAN WAS USED IN THE 1964 REPORT;  
16 CORRECT, SIR?  
17 A. THAT'S CORRECT.  
18 Q. AND THE DEFINITION THAT THE SURGEON GENERAL USED  
19 IN 1964 -- EXCUSE ME -- 1988 HAD THREE PRIMARY CRITERIA; IS  
20 THAT CORRECT, SIR?  
21 A. THAT'S CORRECT.  
22 Q. AND THOSE CRITERIA WERE (WRITING ON BOARD) -- I  
23 SHOULD SAY, ONE OF THOSE CRITERIA WAS WHETHER THE SUBSTANCE  
24 WAS PSYCHOACTIVE; IS THAT CORRECT, SIR?  
25 A. YES.  
26 Q. A SECOND CRITERION WAS WHETHER THE SUBSTANCE IS  
27 USED COMPULSIVELY; IS THAT CORRECT, SIR?  
28 A. WELL, THE WAY THAT WE DESCRIBED IT, IT WAS HIGHLY  
JUDITH ANN OSSA, CSR NO. 2310

0960

1 CONTROLLED OR COMPULSIVE USE.  
2 Q. HIGHLY CONTROLLED OR COMPULSIVE USE?  
3 A. FOR BREVITY, I'M HAPPY TO GO ALONG WITH YOUR  
4 NOTATION THERE.  
5 Q. A THIRD PRIMARY CRITERION THAT THE SURGEON USED  
6 IN 1988 WAS WHETHER A SUBSTANCE WAS REINFORCING; IS THAT  
7 CORRECT, SIR?  
8 A. YES.  
9 Q. THOSE ARE THE THREE PRIMARY CRITERIA THAT THE  
10 SURGEON GENERAL USED IN 1988 TO EVALUATE WHETHER SMOKING AND  
11 NICOTINE SHOULD BE DESCRIBED AS AN ADDICTION; CORRECT, SIR?  
12 A. THOSE WERE THE PRIMARY CRITERIA. THERE WERE ALSO  
13 ADDITIONAL CRITERIA.  
14 Q. DR. DAVIS, THE FACT THAT SMOKING SATISFIED THOSE  
15 THREE CRITERIA AS WE JUST DISCUSSED WAS KNOWN IN 1964;  
16 CORRECT, SIR?  
17 A. MUCH OF THAT WAS KNOWN. CERTAINLY NOT THE WEALTH  
18 OF INFORMATION THAT WE KNEW BY 1988.  
19 A LOT OF DETERMINATIONS THAT ARE MADE IN MEDICAL  
20 SCIENCE ARE BASED ON THE TOTAL WEIGHT OF THE EVIDENCE. SO A  
21 KEY ISSUE IS: HOW MUCH EVIDENCE IS THERE IN THESE DIFFERENT  
22 AREAS? HOW MANY PEOPLE USE CIGARETTES COMPULSIVELY? HOW  
23 REINFORCING IS IT AND FOR HOW MANY SMOKERS? WHAT PERCENTAGE  
24 OF SMOKERS?  
25 SO IT'S NOT QUITE AS CLEAR-CUT AS I THINK YOU'RE  
26 ASKING.  
27 WAS IT KNOWN? WAS IT NOT KNOWN? THERE ARE  
28 GRADATIONS OF KNOWLEDGE.

JUDITH ANN OSSA, CSR NO. 2310

0961

1 Q. DR. DAVIS, IN THE 1964 REPORT THAT YOU AND I JUST  
2 REVIEWED, THE SURGEON GENERAL RECOGNIZED THAT SMOKING WAS  
3 PSYCHOACTIVE; IS THAT CORRECT, SIR?  
4 A. YES.  
5 Q. AND IN THE '64 REPORT, THE SURGEON GENERAL  
6 RECOGNIZED THAT SOME SMOKERS SMOKED COMPULSIVELY; CORRECT,  
7 SIR?  
8 A. SOME DO; THAT'S RIGHT.  
9 Q. AND ALTHOUGH YOU'RE NOT CONFIDENT AS TO WHETHER  
10 THE TECHNICAL OR LAY DEFINITION OF THE WORD WAS BEING USED  
11 AT THAT TIME, IN 1964, THE SURGEON GENERAL DID USE THE TERM  
12 "REINFORCING" TO DESCRIBE THE PHARMACOLOGICAL ACTIONS OF  
13 NICOTINE AS IT RELATES TO SMOKING BEHAVIOR; CORRECT, SIR?  
14 A. WELL, YOU ARE SAYING "REINFORCING." THE WORDING

15 IN THE 1964 REPORT IS "REINFORCED BY."  
16 Q. I'M SORRY. IS THERE A DIFFERENCE BETWEEN  
17 NICOTINE REINFORCING SMOKING BEHAVIOR AND SMOKING BEHAVIOR  
18 BEING REINFORCED BY NICOTINE?  
19 A. IT GETS TO THE QUESTION: IS IT A LAY USE OF THE  
20 TERM OR THE TECHNICAL USE OF THE TERM?  
21 Q. DOCTOR, IS THERE ANY DIFFERENCE BETWEEN SAYING  
22 THAT SMOKING IS REINFORCED BY NICOTINE VERSUS SAYING THAT  
23 SMOKING REINFORCEMENT -- I'M SORRY. NOW YOU'VE GOT ME  
24 SCRAMBLED UP.  
25 LET ME TRY AGAIN.  
26 (TO THE REPORTER:) I HATE TO ASK YOU, BUT COULD  
27 YOU READ FOR ME THE LAST TIME I ASKED THE QUESTION  
28 PROPERLY.

JUDITH ANN OSSA, CSR NO. 2310

0962

1 THE COURT: YOU WANT JUDITH TO DETERMINE WHETHER  
2 YOU ASKED IT PROPERLY?  
3 MR. FURR: I CAN DO IT. I'M SORRY.  
4 Q. DR. DAVIS, IS THERE A DIFFERENCE BETWEEN SAYING  
5 THAT SMOKING IS REINFORCED BY NICOTINE AND SAYING NICOTINE  
6 IS REINFORCING SMOKING BEHAVIOR?  
7 A. REINFORCEMENT IS NOT NECESSARILY A SIMPLE  
8 CONCEPT. IT'S NOT NECESSARILY JUST THE LAY USE OF THE TERM.  
9 AND TO TRY AND GET US OUT OF THIS MORASS OF  
10 CONFUSION, LET ME EXPLAIN IT TO YOU THIS WAY. REINFORCEMENT  
11 IN ANIMALS WOULD WORK LIKE THIS. IF YOU PUT AN INTRAVENOUS  
12 LINE IN A RAT, FOR EXAMPLE, AND GIVE IT AN INJECTION OF  
13 NICOTINE WHEN IT HITS A LEVER, THEN YOU WOULD DEMONSTRATE  
14 REINFORCEMENT, HOW NICOTINE IS REINFORCING.  
15 THE WAY IT WOULD WORK IS LIKE THIS: THE RAT  
16 WOULD MOVE AROUND ITS CAGE. IT MIGHT JUST ACCIDENTALLY STEP  
17 ON OR HIT A LEVER, AND WHEN IT DOES, IT GETS AN INJECTION OF  
18 NICOTINE. AND IT FEELS GOOD WHEN IT GETS THAT HIT OF  
19 NICOTINE.  
20 THEN, MAYBE A FEW HOURS LATER, IT DOES THE SAME  
21 THING. IT GETS NICOTINE AGAIN, AND IT FEELS GOOD AGAIN.  
22 PRETTY SOON, THE RAT, AS SMALL AS HIS BRAIN IS,  
23 MAKES A CONNECTION BETWEEN THE LEVER AND FEELING GOOD. AND  
24 THEN HE STARTS HITTING THAT LEVER MORE.  
25 AND PRETTY SOON, INSTEAD OF HITTING IT A COUPLE  
26 DAYS LATER (DEMONSTRATING), IT'S A COUPLE OF HOURS LATER  
27 (DEMONSTRATING). THAT'S REINFORCEMENT. THE DRUG IS  
28 REINFORCING IN THE RAT THE BEHAVIOR OF DRUG-SEEKING

JUDITH ANN OSSA, CSR NO. 2310

0963

1 BEHAVIOR. THE DRUG-SEEKING BEHAVIOR IS HITTING THE LEVER  
2 BECAUSE THAT GIVES THAT RAT THE DRUG.  
3 NOW, ADDICTING DRUGS WILL LEAD THE RAT TO DO  
4 THAT. NICOTINE WILL DO THAT. AMPHETAMINES WILL DO THAT.  
5 HEROIN WILL DO THAT. AND OTHER DRUGS THAT ARE NOT ADDICTING  
6 WILL NOT DO THAT. THAT'S WHAT A REINFORCEMENT IS.  
7 I DON'T KNOW IF THAT'S WHAT THE SURGEON GENERAL  
8 IN 1964 WAS REFERRING TO, BUT THAT WAS THE TYPE OF THING WE  
9 LOOKED AT IN 1988 WHEN WE MADE REINFORCING BEHAVIOR ONE OF  
10 OUR THREE MAJOR CRITERIA.  
11 Q. OKAY. WITH RESPECT TO PSYCHOACTIVITY AND  
12 COMPULSIVE USE, THE SURGEON GENERAL KNEW IN 1964 THAT  
13 SMOKING AND NICOTINE SATISFIED THOSE PRIMARY CRITERIA;  
14 CORRECT?  
15 A. IT REFERRED TO THE PSYCHOACTIVE PROPERTIES OF  
16 NICOTINE. IT DID REFER TO COMPULSIVE USE OF CIGARETTES BY  
17 SOME SMOKERS, YES.

18 Q. DR. DAVIS, WHEN THESE THREE PRIMARY CRITERIA WERE  
19 ADOPTED BY THE SURGEON GENERAL IN 1988 (INDICATING) TO  
20 EVALUATE WHETHER OR NOT SMOKING AND NICOTINE ARE ADDICTIVE,  
21 IT WAS ALREADY KNOWN THAT SMOKING AND NICOTINE SATISFIED  
22 THOSE CRITERIA, WASN'T IT, SIR?

23 A. THERE WAS EVIDENCE IN THAT REGARD, YES. THIS WAS  
24 NOT A NEW DETERMINATION IN 1988. IT WAS A LOOK AT ALL THE  
25 EVIDENCE, WIPING THE SLATE CLEAN. "LET'S LOOK AT ALL THE  
26 EVIDENCE. LET'S DEVELOP CRITERIA THAT WERE RECEIVED IN THE  
27 SCIENTIFIC COMMUNITY AND COME TO A CONCLUSION." AND THAT'S  
28 WHAT WE DID.

JUDITH ANN OSSA, CSR NO. 2310

0964

1 Q. DOCTOR, THE FACT IS THAT IN 1988, WHEN THE  
2 SURGEON GENERAL EVALUATED WHETHER TO LABEL SMOKING AND  
3 NICOTINE AS ADDICTIVE, THE SURGEON GENERAL ADOPTED A NEW SET  
4 OF CRITERIA FOR THE PURPOSE OF EVALUATING SMOKING AND  
5 NICOTINE; IS THAT CORRECT, SIR?

6 A. WELL, WHEN YOU SAY "A NEW SET OF CRITERIA," I'M  
7 NOT EXACTLY SURE WHAT YOU MEAN.

8 THESE CRITERIA WERE USED BY MANY OTHERS, AND I  
9 CAN GIVE YOU EXAMPLES. THEY WERE USED IN THE EARLY 1980S BY  
10 DR. POLLIN, THE HEAD OF THE NATIONAL INSTITUTE OF DRUG  
11 ABUSE, WHO POINTED OUT THAT THESE TYPE OF CRITERIA ARE  
12 HALLMARKS OF ADDICTING DRUGS.

13 THIS WAS NOT A BRAND-NEW DEFINITION THAT THE  
14 SURGEON GENERAL PULLED OUT OF A HAT WITH NO FOUNDATION JUST  
15 TO ADVANCE HIS AGENDA. THIS WAS ACCEPTED IN THE SCIENTIFIC  
16 COMMUNITY, THESE CRITERIA BEING THE HALLMARK OF ADDICTING  
17 DRUGS.

18 Q. DR. DAVIS, ISN'T IT A FACT THAT WHEN THE SURGEON  
19 GENERAL ADOPTED THESE CRITERIA IN 1988, IN THE 1988 REPORT,  
20 THE SURGEON GENERAL STATED THAT THESE CRITERIA WERE -- THEY  
21 HAD BEEN DEVELOPED AS A SET OF CRITERIA FOR THE PURPOSE OF  
22 EVALUATING WHETHER SMOKING AND NICOTINE ARE ADDICTIVE?

23 A. YOU ARE IMPLYING AGAIN THIS WAS SOMETHING  
24 BRAND-NEW. I WOULD CHARACTERIZE IT AS A REPACKAGING OF  
25 CONCEPTS. REPACKAGING THE CONCEPT OF PSYCHOACTIVITY,  
26 TOLERANCE, WITHDRAWAL, REINFORCING, COMPULSIVE USE, TAKING  
27 THESE GENERALLY ACCEPTED CONCEPTS OF DRUG ADDICTION AND  
28 PUTTING THEM INTO A FORMAT THAT WE COULD USE TO EVALUATE

JUDITH ANN OSSA, CSR NO. 2310

0965

1 WHETHER NICOTINE MEETS THEM.

2 Q. DR. DAVIS, DO YOU STILL HAVE YOUR COPY OF THE  
3 1988 REPORT UP THERE, SIR?

4 A. YES, I DO.

5 Q. COULD YOU TAKE A LOOK AT PAGE 7 OF THAT REPORT,  
6 SIR?

7 A. I SEE IT.

8 Q. ISN'T IT CORRECT, SIR, THAT IN 1988, THE SURGEON  
9 GENERAL'S REPORT STATED THAT:

10 "THE MAIN CONCLUSIONS OF THE REPORT ARE BASED  
11 UPON CONCEPTS OF DRUG DEPENDENCE THAT HAVE BEEN  
12 DEVELOPED BY EXPERT COMMITTEES OF THE WORLD  
13 HEALTH ORGANIZATION AS WELL AS IN PUBLICATIONS OF  
14 NIDA AND THE AMERICAN PSYCHIATRIC ASSOCIATION.  
15 THESE CONCEPTS WERE USED TO DEVELOP A SET OF  
16 CRITERIA THAT DETERMINE WHETHER TOBACCO-DELIVERED  
17 NICOTINE IS ADDICTING?"

18 THAT IS WHAT THE REPORT STATES, ISN'T IT, SIR?

19 A. THAT'S RIGHT. CONSISTENT WITH MY COMMENTS A FEW  
20 MOMENTS AGO.

21 MS. CHABER: YOUR HONOR, COULD WE HAVE THAT  
22 PORTION MARKED?  
23 THE COURT: NO. AND I DON'T ALLOW COUNSEL TO  
24 ASK FOR THAT IN THE MIDDLE OF A TRIAL.  
25 THE ANSWER IS NO.  
26 MS. CHABER: I MISUNDERSTOOD THE COURT'S  
27 INDICATION EARLIER THAT WE --  
28 THE COURT: WE DON'T HAVE LAWYERS ASKING TO HAVE  
JUDITH ANN OSSA, CSR NO. 2310

0966

1 THINGS MARKED DURING THE COURSE OF THE TRIAL. THAT WILL NOT  
2 BE DONE AND I WILL NOT PERMIT THE REQUEST TO BE MADE.  
3 OKAY. IF YOU WANT ME TO EXPLAIN WHY, I WILL DO  
4 IT DURING THE NEXT RECESS.  
5 MS. CHABER: YES, PLEASE, YOUR HONOR.  
6 THE COURT: OKAY. THAT'S FINE.  
7 MR. FURR: Q. DR. DAVIS, I WANT TO TURN BACK  
8 TO SOME ADDITIONAL TESTIMONY YOU GAVE ON THE MANNER IN WHICH  
9 THE DEFINITION OF ADDICTION CHANGED BETWEEN THE 1964 REPORT  
10 AND THE 1988 REPORT.  
11 BUT BEFORE I DO THAT, SIR, ISN'T IT CORRECT THAT  
12 IF TODAY SMOKING AND NICOTINE WERE EVALUATED USING THE 1964  
13 CRITERIA, THAT SMOKING AND NICOTINE WOULD BE DESCRIBED AS A  
14 HABIT RATHER THAN AS AN ADDICTION; CORRECT?  
15 A. I'M NOT SURE. ONE OF THE ISSUES BACK IN 1964 WAS  
16 WHETHER SMOKING HAS DETRIMENTAL EFFECTS ON SOCIETY. AND I  
17 THINK THE SURGEON GENERAL'S COMMITTEE BACK THEN WAS THINKING  
18 ABOUT VIOLENCE AND CRIME ASSOCIATED WITH HEROIN ADDICTION.  
19 BUT CERTAINLY, WITH CIGARETTE SMOKING, I WOULD  
20 ARGUE THAT IT DOES HAVE DETRIMENTAL EFFECTS ON SOCIETY. WE  
21 TALKED ABOUT AT LENGTH YESTERDAY THE OVERPOWERING DESIRE AND  
22 NEED. I'D SAY AGAIN, THERE'S SUBSTANTIAL EVIDENCE THAT MANY  
23 SMOKERS HAVE AN OVERPOWERING DESIRE AND NEED TO SMOKE  
24 CIGARETTES.  
25 THAT IS WHY WE SEE PEOPLE SMOKE THROUGH A  
26 TRACHEOTOMY HOLE WHEN THEY'VE HAD THEIR LARYNX REMOVED  
27 CAUSED BY CANCER. THAT IS WHY WE SEE PEOPLE WHO HAVE HAD  
28 AMPUTATIONS OF LEGS AND ARMS FROM BUERGER'S DISEASE CAUSED  
JUDITH ANN OSSA, CSR NO. 2310

0967

1 BY SMOKING CONTINUE TO SMOKE. THAT IS WHY WE SEE PEOPLE  
2 SOMETIMES WALKING TO CONVENIENCE STORES AT 2:00 IN THE  
3 MORNING THROUGH THE POURING RAIN TO GET CIGARETTES WHEN THEY  
4 RUN OUT.  
5 I WOULD SAY, FOR MANY SMOKERS, THERE IS AN  
6 OVERPOWERING DESIRE AND NEED TO CONTINUE TO SMOKE ON A  
7 REGULAR BASIS.  
8 SO PERHAPS EVEN USING THE 1964 DEFINITION,  
9 SMOKING COULD BE IDENTIFIED AS AN ADDICTING BEHAVIOR.  
10 Q. DR. DAVIS, YOU TESTIFIED IN A CASE IN OHIO KNOWN  
11 AS THE IRONWORKERS TRIAL; IS THAT CORRECT, SIR?  
12 A. YES.  
13 Q. IN FACT, YOU TESTIFIED EARLIER THIS YEAR, ON  
14 MARCH -- IN MARCH OF 19 -- EXCUSE ME -- EARLY LAST YEAR, IN  
15 MARCH OF 1999; IS THAT CORRECT, SIR?  
16 A. I DON'T RECALL THE DATES, BUT I DID TESTIFY IN  
17 THAT CASE.  
18 Q. AND YOU TESTIFIED UNDER OATH THERE, SIR, JUST AS  
19 YOU'RE TESTIFYING UNDER OATH TODAY; IS THAT CORRECT, SIR?  
20 A. YES.  
21 Q. DR. DAVIS, LET ME HAND YOU A COPY OF YOUR  
22 TESTIMONY FROM THE IRONWORKERS TRIAL, SIR.  
23 AND A COPY FOR YOUR HONOR.



24 MR. BROWN: PAGE AND LINE?  
25 MS. CHABER: I NEED MY GLASSES. IT'S A  
26 CONDENSED TRANSCRIPT.  
27 MR. FURR: IT'S HARD TO READ.  
28 Q. DR. DAVIS, LET ME ASK YOU TO TURN TO PAGE 2172 OF  
JUDITH ANN OSSA, CSR NO. 2310

0968

1 YOUR IRONWORKERS TRIAL TESTIMONY, LINE 9 --  
2 MS. CHABER: LINE 9 TO --  
3 THE COURT: MR. FURR, ARE YOU PROPOSING TO READ  
4 THE TESTIMONY?  
5 MR. FURR: YES, YOUR HONOR.  
6 THE COURT: YOU NEED TO GIVE THE BEGINNING AND  
7 ENDING LINES.  
8 MR. FURR: LINES 9 THROUGH 25, YOUR HONOR.  
9 THE COURT: NINE THROUGH 25.  
10 THE WAY WE HANDLE IT IS I ASK MS. CHABER WHETHER  
11 YOU HAVE ANY OBJECTION. AND I'M NOT GOING TO ASK THAT  
12 QUESTION AS WE GO THROUGH THIS. I'M JUST GOING TO RELY ON  
13 COUNSEL TO TAKE THE LABORING OAR AND LET ME KNOW IF YOU HAVE  
14 OBJECTIONS OR NOT.  
15 ANY OBJECTIONS TO THAT?  
16 MS. CHABER: I'M READING.  
17 THE COURT: I UNDERSTAND. I'M GOING TO ASK  
18 COUNSEL TO SPEED UP ON THE READING, SO WE DON'T DELAY THE  
19 PROCEEDINGS.  
20 LET US KNOW. DO YOU OBJECT OR NOT?  
21 MS. CHABER: LET ME JUST TURN THE PAGE AND I  
22 WILL TELL YOU OR NOT.  
23 MS. CHABER: THAT'S FINE.  
24 THE COURT: NO OBJECTION?  
25 MS. CHABER: NO OBJECTION.  
26 THE COURT: OKAY. YOU MAY READ. WHEN YOU READ  
27 THESE THINGS, THOUGH, AS YOU READ THEM, SAY, "QUESTION" AND  
28 "ANSWER," SO JUDITH AND THE JURY KNOW WHAT'S A QUESTION AND  
JUDITH ANN OSSA, CSR NO. 2310

0969

1 WHAT'S AN ANSWER.  
2 MR. FURR: Q. DR. DAVIS, IS IT CORRECT, SIR,  
3 THAT YOU WERE ASKED THE QUESTION ON LINE 9:  
4 "AND HAD THE SURGEON GENERAL INTENDED TO USE THE  
5 DEFINITION THAT WAS USED IN THE '64 REPORT" --  
6 THE COURT: IT DOESN'T SAY "USED," SO YOU BETTER  
7 START OVER.  
8 MR. FURR: Q. "AND HAD THE SURGEON GENERAL  
9 INTENDED TO USE THE DEFINITION THAT WAS IN THE  
10 '64 REPORT, THEN THE CIGARETTE SMOKING WOULD  
11 STILL NOT BE TERMED AN ADDICTION UNDER THAT  
12 DEFINITION, CORRECT?"  
13 DO YOU SEE THAT QUESTION, DOCTOR?  
14 A. YES.  
15 Q. AND YOUR ANSWER WAS:  
16 "WELL, THAT DEFINITION USED IN THE 1964 REPORT  
17 WAS CHANGED LATER THAT YEAR. SO, YOUR QUESTION  
18 IS A VERY HYPOTHETICAL ONE.  
19 "I GUESS IT SAYS IF THE DEFINITION WE USED 35  
20 YEARS AGO WAS STILL THE SAME WE USE TODAY, WOULD  
21 WE NOT CALL IT AN ADDITION. YEAH, WE WOULDN'T  
22 CALL IT ADDICTION. BUT THE DEFINITION NOT ONLY  
23 CHANGED IN THOSE INTERVENING 35 YEARS, THEY  
24 CHANGED THAT SAME YEAR, 1964. THAT WAS THE  
25 CHANGE IN THE DEFINITION FROM THE WORLD HEALTH  
26 ORGANIZATION, WHICH AS I MENTIONED NOT ONLY

27 CALLED CIGARETTES HABITUATING, BUT ALSO CALLED  
28 COCAINE AND AMPHETAMINES HABITUATING.

JUDITH ANN OSSA, CSR NO. 2310

0970

1 "THEN THEY CHANGED THEIR DEFINITION, AND THEN  
2 ALL THREE BECAME ADDICTING."  
3 IS THAT YOUR ANSWER, DOCTOR?

4 A. THAT'S WHAT IT SAYS. I THINK THAT THERE'S --  
5 THERE'S ROOM HERE FOR FINDING CONSISTENCY.

6 I THINK THE POINT IS, IF YOU GO THROUGH IT  
7 RIGOROUSLY, LIKE WAS DONE IN 1964, AS I MENTIONED A FEW  
8 MOMENTS AGO, PERHAPS IT WOULD BE CALLED ADDICTING.

9 YOU PRESENTED TO ME IN DETAIL THE CRITERIA USED  
10 IN 1964. THEY WERE NOT PRESENTED TO ME IN DETAIL MOMENTS  
11 BEFORE I ANSWERED THIS QUESTION.

12 AS I POINTED OUT, I THINK WHEN YOU LOOK AT  
13 "OVERPOWERING DESIRE" AND "DETRIMENTAL EFFECTS ON SOCIETY,"  
14 I THINK YOU CAN MAKE A CASE THAT CIGARETTE SMOKING WOULD  
15 FULFILL THOSE CRITERIA.

16 SO ON FURTHER REFLECTION, GETTING THE DETAILED  
17 CRITERIA BEFORE I ANSWERED THE QUESTION, I THINK A CASE  
18 COULD BE MADE WOULD I ANSWER DIFFERENTLY TODAY ABOUT THAT?  
19 I THINK I'D WANT TO GO BACK AND GET THE 35-YEAR-OLD  
20 DEFINITION AND KICK IT AROUND SOME MORE.

21 BUT, I MEAN, AT SOME POINT, I THINK WE NEED TO  
22 ASK WHAT'S THE PURPOSE OF GOING BACK 35 YEARS IN DEALING  
23 WITH A DEFINITION THAT WAS REJECTED 35 YEARS AGO?

24 Q. DR. DAVIS, IS IT CORRECT THAT IN MARCH OF 1999,  
25 YOU TESTIFIED UNDER OATH THAT, USING THE SURGEON GENERAL'S  
26 1964 DEFINITION OF ADDICTION, YOU WOULD NOT CLASSIFY SMOKING  
27 AND NICOTINE AS ADDICTIVE TODAY?

28 A. THAT'S WHAT I SAID.

JUDITH ANN OSSA, CSR NO. 2310

0971

1 Q. DR. DAVIS, I WANTED TO TALK TO YOU IN SOME DETAIL  
2 NOW ABOUT YOUR TESTIMONY REGARDING THE WORLD HEALTH  
3 ORGANIZATION'S CHANGE IN NOMENCLATURE THAT YOU SAY OCCURRED  
4 IN 1965. IS THAT CORRECT, SIR?

5 A. THE WORLD HEALTH ORGANIZATION'S CHANGE IN  
6 NOMENCLATURE?

7 Q. YES.

8 A. ARE YOU REFERRING TO THE DEFINITION WE WERE JUST  
9 TALKING ABOUT?

10 Q. YES, SIR. I BELIEVE YOU TESTIFIED THAT IN 1965,  
11 THE WORLD HEALTH ORGANIZATION CHANGED ITS DEFINITION OF  
12 "ADDICTION"; IS THAT CORRECT, SIR?

13 A. I THINK I SAID 1964.

14 Q. 1964; IS THAT CORRECT?

15 A. THAT'S MY UNDERSTANDING.

16 Q. THAT'S NOT ACTUALLY WHAT OCCURRED, IS IT, DR.  
17 DAVIS?

18 I MEAN, ISN'T WHAT OCCURRED THAT THE WORLD HEALTH  
19 ORGANIZATION STOPPED USING THE TERM "ADDICTION" AND BEGAN  
20 USING THE TERM "DEPENDENCE-PRODUCING DRUG" AND STOPPED USING  
21 THE TERM "HABITUATING" AND COLLAPSED BOTH ADDICTIVE DRUGS  
22 AND HABITUATING DRUGS INTO THE TERM "DEPENDENCE-PRODUCING  
23 DRUG"?

24 A. YES.

25 Q. AND THE REASON THAT THE WORLD HEALTH ORGANIZATION  
26 DID THAT WAS BECAUSE IT FOUND THAT THE DEFINITION OF  
27 "ADDICTION" HAD BECOME TOO CONFUSING AND TOO SUSCEPTIBLE TO  
28 DIFFERENT INTERPRETATIONS BY SCIENTISTS WORKING IN THE

JUDITH ANN OSSA, CSR NO. 2310

0972

1 FIELD; IS THAT CORRECT, SIR?

2 A. WELL, I'M NOT SURE THAT CAPTURES IT ALL.

3 MY UNDERSTANDING WAS THAT A MAJOR REASON FOR IT  
4 DOING WHAT IT DID WAS BECAUSE THE DISTINCTION BETWEEN  
5 HABITUATING AND ADDICTING DRUGS WAS FELT NOT TO BE  
6 APPROPRIATE.

7 Q. DR. DAVIS, HAVE YOU EVER ACTUALLY GONE BACK AND  
8 LOOKED AT THE ORIGINAL DOCUMENTATION, IN WHICH THE WORLD  
9 HEALTH ORGANIZATION ANNOUNCED THAT IT WAS GOING TO  
10 SUBSTITUTE THE TERM "DRUGS OF DEPENDENCE" FOR ITS PREVIOUS  
11 TERMS OF "ADDICTING DRUGS" AND "HABITUATING DRUGS"?

12 A. I SUSPECT I HAVE SEEN THAT DOCUMENT, BUT I  
13 HAVEN'T LOOKED AT IT RECENTLY.

14 Q. DR. DAVIS, LET ME ASK YOU TO TAKE A LOOK AT A  
15 DOCUMENT TITLED "WHO, W-H-O, EXPERT COMMITTEE ON  
16 ADDICTION-PRODUCING DRUGS, TECHNICAL REPORT NO. 273," DATED  
17 GENEVA, 1964.

18 HAVE YOU EVER SEEN THAT DOCUMENT BEFORE, DR.  
19 DAVIS?

20 A. I MIGHT HAVE. I DON'T RECALL.

21 I ASSUME IT WOULD HAVE BEEN CONSIDERED IN 1987  
22 AND 1988 WHEN WE WERE WORKING ON THE SURGEON GENERAL'S  
23 REPORT.

24 Q. IT'S ONE OF THE DOCUMENTS THAT'S CITED IN THE  
25 SURGEON GENERAL'S REPORTS; CORRECT, SIR?

26 A. I WOULD BE SURPRISED IF IT HADN'T BEEN CITED.  
27 EXCUSE ME FOR ANSWERING THE WAY I DID, BUT, OF COURSE, THERE  
28 ARE THOUSANDS OF ARTICLES CITED IN THE REPORT, AND THERE

JUDITH ANN OSSA, CSR NO. 2310

0973

1 HAVE BEEN MANY REPORTS I WORKED ON.

2 SO I CAN'T REMEMBER ALL OF THE CITATIONS.

3 Q. LET ME ASK YOU TO TURN TO PAGE 9 OF THAT REPORT,  
4 SPECIFICALLY, SECTION 4 "TERMINOLOGY IN REGARD TO DRUG  
5 ABUSE."

6 THERE, THE WORLD HEALTH ORGANIZATION DESCRIBES  
7 WHY IT IS REPLACING THE TERMS "DRUG ADDICTION" AND "DRUG  
8 HABITUATION" WITH THE TERM "DRUG DEPENDENCE"; CORRECT, SIR?

9 A. COULD YOU TELL ME WHERE YOU'RE LOOKING?

10 Q. SECTION 4 ON PAGE 9.

11 A. WHAT PART OF THE PAGE?

12 Q. WELL, THE FIRST PARAGRAPH IS THE EXPLANATION, I  
13 BELIEVE, SIR.

14 A. (EXAMINING) I SEE IT.

15 Q. OKAY. THERE, DOCTOR, THE WORLD HEALTH  
16 ORGANIZATION EXPLAINS THAT IT WAS DROPPING USE OF THE TERM  
17 "ADDICTING" BECAUSE THAT TERM HAD BECOME TOO CONFUSING,  
18 SUSCEPTIBLE TO DIFFERENT MEANINGS AND MISUSE BY SCIENTISTS  
19 ATTEMPTING TO WORK IN THE FIELD; IS THAT CORRECT, SIR?

20 A. THOSE ARE A FEW OF A GROUP OF REASONS THAT IT  
21 GIVES.

22 THERE'S ANOTHER REASON THAT'S LISTED IN THE NEXT  
23 SENTENCE.

24 Q. WHAT'S THE OTHER REASON?

25 A. "THE LIST OF DRUGS ABUSED INCREASED IN NUMBER AND  
26 DIVERSITY."

27 THEN IT GOES ON TO SAY:

28 "THESE DIFFICULTIES HAVE BECOME INCREASINGLY

JUDITH ANN OSSA, CSR NO. 2310

0974

1 APPARENT AND VARIOUS ATTEMPTS HAVE BEEN MADE TO  
2 FIND A TERM THAT COULD BE APPLIED TO DRUG ABUSE

3                   GENERALLY."

4           Q.    DR. DAVIS, I THOUGHT I HEARD YOU SAY A FEW

5 MINUTES AGO THAT WHEN THE WHO CHANGED ITS TERMINOLOGY IN

6 1964, THAT COCAINE, AMPHETAMINES AND NICOTINE ALL BECAME

7 LISTED AS ADDICTIVE SUBSTANCES.

8           IS THAT WHAT YOU JUST TESTIFIED TO?

9           A.    COULD YOU ASK THE QUESTION AGAIN.

10          Q.    YES.  A FEW MINUTES AGO, SIR, DIDN'T YOU JUST

11 TESTIFY THAT WHEN THE WHO CHANGED ITS TERMINOLOGY IN 1964,

12 THAT COCAINE, AMPHETAMINES AND NICOTINE ALL THEN BECAME

13 LABELED AS ADDICTING SUBSTANCES?

14          A.    I DON'T REMEMBER SAYING THAT.

15          Q.    THAT'S NOT YOUR TESTIMONY, IS IT, SIR?

16          A.    I DON'T REMEMBER SAYING THAT.

17                WHAT I REMEMBER SAYING IS THAT TOBACCO, COCAINE

18 AND AMPHETAMINES WERE CONSIDERED HABITUATING IN AN EARLIER

19 DEFINITION.  THAT IS WHAT I REMEMBER SAYING.

20                IF THERE'S SOMETHING ELSE I SAID ABOUT THAT,

21 PLEASE LET ME KNOW.

22          Q.    YOU DID NOT MEAN TO TESTIFY THAT WHEN THIS CHANGE

23 IN TERMINOLOGY WAS MADE, THAT NICOTINE WAS LISTED AS AN

24 ADDICTING SUBSTANCE, DID YOU, SIR?

25          A.    YOUR QUESTION IS:  WAS NICOTINE CONSIDERED

26 DEPENDENCE-PRODUCING AFTER THIS DEFINITION CHANGED?

27          Q.    NO, SIR.  MY QUESTION IS:  A FEW MINUTES AGO, YOU

28 DID NOT MEAN TO TESTIFY THAT WHEN THIS DEFINITION WAS

JUDITH ANN OSSA, CSR NO. 2310

0975

1    CHANGED, NICOTINE THEN BECAME LISTED AS AN ADDICTIVE

2 SUBSTANCE BY THE WORLD HEALTH ORGANIZATION?

3          A.    IT'S A VERY COMPLEX QUESTION.  IF I UNDERSTAND

4 YOU CORRECTLY, YOUR QUESTION IS:  WHEN THE DEFINITION

5 CHANGED, WAS SMOKING CONSIDERED AN ADDICTION OR A

6 DEPENDENCE-PRODUCING BEHAVIOR BY THE WHO?

7          Q.    I WILL ASK THAT QUESTION.

8          A.    I DON'T KNOW WHAT THE WHO SAID AT THE TIME THAT

9 IT CHANGED THE DEFINITION.

10         Q.    WELL, THE WHO LISTED COCAINE AS A DEPENDENCE-

11 PRODUCING SUBSTANCE, AND LISTED AMPHETAMINES AS A

12 DEPENDENCE-PRODUCING SUBSTANCE IN 1964; CORRECT, SIR?

13         A.    I DON'T RECALL.

14         Q.    WOULD YOU TAKE A LOOK AT THE DOCUMENT AND VERIFY

15 THAT THAT'S CORRECT.

16                I BELIEVE COCAINE IS LISTED ON PAGE 14.

17         A.    THAT'S RIGHT.  I SEE IT.

18         Q.    AMPHETAMINES ARE ALSO ON PAGE 14?

19         A.    THAT'S RIGHT.

20         Q.    BUT WHEN THAT CHANGE IN TERMINOLOGY WAS

21 MADE, SMOKING AND NICOTINE WAS NOT LISTED AS A

22 DEPENDENCE-PRODUCING SUBSTANCE, WAS IT, SIR?

23         A.    WELL, IT DOESN'T LIST NICOTINE; THAT IS CORRECT.

24                IN THIS PARTICULAR PARAGRAPH -- I HAVEN'T

25 REVIEWED THE WHOLE DOCUMENT, BUT I AGREE WITH YOU.  THIS

26 PARAGRAPH DOES NOT LIST NICOTINE.

27         Q.    IN FACT, ISN'T IT CORRECT, SIR, THAT THE WORLD

28 HEALTH ORGANIZATION DID NOT LIST SMOKING AND NICOTINE AS

JUDITH ANN OSSA, CSR NO. 2310

0976

1    DEPENDENCE-PRODUCING SUBSTANCES UNTIL THE 1970S?

2          A.    I DON'T RECALL THE PRECISE YEAR THAT IT MADE THAT

3 DETERMINATION.

4          Q.    DR. DAVIS, I BELIEVE YOU'VE TOLD US A COUPLE OF

5 TIMES OVER THE PAST TWO DAYS ALREADY THAT YOU VIEW THE TERMS

6 "DEPENDENCE-PRODUCING" AND "ADDICTING" THE SAME IN TERMS OF  
7 THE EFFECTS OF THE DRUG; IS THAT CORRECT?

8 A. WE SAID IN THE 1988 SURGEON GENERAL'S REPORT THAT  
9 THOSE TERMS ARE USED SYNONYMOUSLY, INTERCHANGEABLY. AND  
10 THAT'S HOW I HAVE USED THEM AND HOW I HAVE UNDERSTOOD OTHER  
11 PEOPLE TO USE THEM AND I BELIEVE HEALTH AUTHORITIES TO USE  
12 THEM.

13 Q. DR. DAVIS, IS IT TRUE THAT THE EARLY DRAFTS OF  
14 THE 1988 REPORT USED THE TERM "DEPENDENCE-PRODUCING" AS  
15 OPPOSED TO "ADDICTING"?

16 A. I KNOW IT DID IN THE TITLE. I DON'T RECALL IN  
17 THE BODY OF THE REPORT.

18 Q. BUT THEN, OBVIOUSLY, A DETERMINATION WAS MADE TO  
19 START USING THE TERM "ADDICTING" AS OPPOSED TO USING THE  
20 TERM "DEPENDENCE-PRODUCING"; IS THAT CORRECT, SIR?

21 A. MY GUESS IS THAT THE TERM "DEPENDENCE-PRODUCING"  
22 WAS USED THROUGHOUT THE REPORT, BUT IN SOME PLACES  
23 "ADDICTION" MIGHT HAVE BEEN USED.

24 WE DID HAVE A DISCUSSION FOR MAYBE AN HOUR OR SO,  
25 A COUPLE OF HOURS, ABOUT WHAT TERMS TO USE IN THE TITLE.

26 SO I THINK THERE WAS MORE FOCUS, MORE DISCUSSION  
27 ABOUT WHAT TERM TO USE IN THE TITLE THAN WHAT TO USE  
28 THROUGHOUT THE REPORT.

JUDITH ANN OSSA, CSR NO. 2310

0977

1 THE REPORT STATES VERY CLEARLY AT THE BEGINNING,  
2 AS I SAID A MOMENT AGO, THAT THE TERMS ARE USED  
3 INTERCHANGEABLY. THEY'RE TO BE CONSIDERED SYNONYMOUS.

4 Q. THE DECISION TO USE "ADDICTIVE" IN THE TITLE AS  
5 OPPOSED TO "DEPENDENCE-PRODUCING" WAS MADE IN PART BECAUSE  
6 YOU BELIEVED THAT IT WOULD BE MORE IMPACTFUL AND HARMFUL TO  
7 THE TOBACCO INDUSTRY TO USE THE TERM "ADDICTIVE" AS OPPOSED  
8 TO "DEPENDENCE-PRODUCING"; IS THAT CORRECT, SIR?

9 A. I DISAGREE ENTIRELY ABOUT WHAT WOULD BE MORE  
10 HARMFUL TO THE TOBACCO INDUSTRY.

11 WE CHOSE THE TERM "ADDICTION" BECAUSE OF WHAT WE  
12 THOUGHT WOULD BE BETTER UNDERSTOOD BY THE PUBLIC.

13 Q. LET ME ASK YOU THIS QUESTION THEN, DOCTOR, AND  
14 TRY TO GET AT IT THIS WAY.

(WRITING ON BOARD)

16 YOU KNOW WHAT THE TERM "OBSESSION" MEANS, DON'T  
17 YOU, SIR?

18 A. I DO.

19 Q. WOULD YOU TELL THE JURY WHAT YOU UNDERSTAND THE  
20 TERM "OBSESSION" TO MEAN.

21 A. I GUESS I DEFINE IT AS SORT OF A SINGLE-MINDED  
22 FOCUS ON DOING SOMETHING.

23 Q. DR. DAVIS, IT IS AN OBSESSION OF YOURS, SIR, TO  
24 HAVE PEOPLE DESCRIBE SMOKING AND NICOTINE AS ADDICTING  
25 INSTEAD OF AS HABITUATING; IS THAT CORRECT, SIR?

26 MS. CHABER: OBJECTION, YOUR HONOR. THAT IS  
27 ARGUMENTATIVE.

28 THE COURT: SUSTAINED.

JUDITH ANN OSSA, CSR NO. 2310

0978

1 THE WITNESS: I HAVE WRITTEN --

2 THE COURT: SUSTAINED.

3 MS. CHABER: IT'S SUSTAINED.

4 THE COURT: SUSTAINED.

5 THE WITNESS: ALL RIGHT.

6 MR. FURR: Q. DR. DAVIS, HAVE YOU WRITTEN IN  
7 THE PAST IN AN ARTICLE PUBLISHED IN THE TOBACCO CONTROL  
8 JOURNAL THAT IT IS AN OBSESSION OF YOURS TO CONVINCE PEOPLE

9 TO USE THE TERM "ADDICTION" TO DESCRIBE SMOKING BEHAVIOR AS  
10 OPPOSED TO THE TERM "HABIT"?  
11 A. I DON'T RECALL SAYING I WAS OBSESSED.  
12 WHAT I DO RECALL IS WRITING AN EDITORIAL IN  
13 TOBACCO CONTROL THAT RECOMMENDED THAT PEOPLE USE THE TERM  
14 "ADDICTION" INSTEAD OF "HABIT" BECAUSE OF THE CONFUSION  
15 BETWEEN THE TWO TERMS, THAT THERE'S A CLEAR DISTINCTION  
16 BETWEEN A HABIT AND AN ADDICTION, AND WE OUGHT TO USE, IN  
17 THE PUBLIC HEALTH COMMUNITY, THE TERM "TOBACCO ADDICTION" OR  
18 "TOBACCO DEPENDENCE" AND NOT "HABIT."  
19 Q. DR. DAVIS, LET ME ASK YOU TO TAKE A LOOK AT A  
20 DOCUMENT I JUST HANDED YOU TITLED "THE LANGUAGE OF NICOTINE  
21 ADDICTION: PURGING THE WORD 'HABIT' FROM OUR LEXICON,"  
22 PUBLISHED IN 1992 IN TOBACCO CONTROL. CORRECT, SIR?  
23 A. YES.  
24 Q. ARE YOU THE RONALD M. DAVIS THAT'S LISTED AS THE  
25 EDITOR, SIR?  
26 A. WELL, THERE ARE A LOT OF RON DAVISES, AND THIS IS  
27 ME.  
28 Q. THIS IS THE EDITORIAL THAT YOU WROTE; IS THAT  
JUDITH ANN OSSA, CSR NO. 2310

0979

1 CORRECT, SIR?  
2 A. CORRECT.  
3 Q. AND, SIR, IS IT CORRECT THAT YOU WROTE IT WHEN  
4 YOU SERVED AS DIRECTOR OF THE U.S. OFFICE ON SMOKING AND  
5 HEALTH?  
6 MS. CHABER: COULD WE GET A PARAGRAPH, PLEASE?  
7 MR. FURR: I'M SORRY. IT'S THE LAST TWO  
8 PARAGRAPHS.  
9 MS. CHABER: THANK YOU.  
10 MR. FURR: I APOLOGIZE.  
11 Q. "WHEN I SERVED AS DIRECTOR OF THE U.S. OFFICE ON  
12 SMOKING AND HEALTH FROM 1987 TO 1991, I SOUGHT TO  
13 KEEP 'HABIT' OUT OF THREE SURGEON GENERAL'S  
14 REPORTS AND OTHER PUBLICATIONS OF THE OFFICE. I  
15 AM NOW WORKING TO KEEP THE WORD OUT OF THIS  
16 JOURNAL. THE ENTRENCHMENT OF THE WORD IN OUR  
17 VERBAL DISCOURSE AND WRITING WILL MAKE EFFORTS TO  
18 PURGE IT SLOW AND DIFFICULT. A SIMILAR EFFORT TO  
19 REPLACE THE TERM 'PASSIVE SMOKING.' (MANY  
20 NONSMOKERS ARE HARDLY 'PASSIVE') WITH  
21 'INVOLUNTARY SMOKING' HAS LARGELY FAILED.  
22 NEVERTHELESS, I WILL CARRY ON WITH MY OBSESSION,  
23 AND I HOPE OTHERS WILL JOIN ME."  
24 THOSE ARE YOUR WORDS, AREN'T THEY, DOCTOR?  
25 A. THEY ARE.  
26 AND IF I CAN EXPLAIN IT. I FORGOT THAT I USED  
27 THE WORD "OBSESSION" WHEN I WROTE THIS IN 1992. AND PERHAPS  
28 I WAS EXAGGERATING MY FEELING ON IT. IT'S NOT LIKE I LAY  
JUDITH ANN OSSA, CSR NO. 2310

0980

1 AWAKE AT NIGHT FEELING HORRIBLE THAT THE WORD "HABIT" SNUCK  
2 INTO MY JOURNAL OR SNUCK INTO THE SURGEON GENERAL'S REPORT  
3 ON PAGE 422.  
4 NO, I'M NOT REALLY OBSESSED. I WAS MAKING A  
5 POINT THAT, AS AN EDITOR, I MAKE RED MARKS WHEN THINGS COME  
6 ACROSS MY DESK. AND THERE ARE SOME THINGS THAT BOTHER ME,  
7 SOME LITTLE WORDS THAT GET UNDER MY SKIN. PROBABLY  
8 EVERYBODY HAS WORDS THAT GET UNDER THEIR SKIN.  
9 THE WORD "HABIT" AS IN "TOBACCO HABITS" OR  
10 "SMOKING HABITS," NO, I JUST DON'T LIKE. IT'S KIND OF  
11 ANNOYING BECAUSE IT CREATES CONFUSION. AND THAT'S WHY I

12 WROTE WHAT I DID.  
13 Q. "OBSESSION" WAS THE TERM YOU CHOSE, WASN'T IT,  
14 DOCTOR?  
15 A. MR. FURR, I'M SURE YOU RECOGNIZE THAT WHEN PEOPLE  
16 WRITE THINGS, YOU KNOW, SOMETIMES THEY SPICE THINGS UP A  
17 LITTLE BIT. THEY TRY TO THROW A LITTLE BIT HUMOR IN HERE.  
18 THEY TRY AND MAKE THINGS MORE READABLE.  
19 NO, I DON'T LAY AWAKE. I DON'T HAVE A  
20 PSYCHIATRIC DISORDER WHERE I'LL OBSCURE AND I'M GRABBING  
21 EVERY PIECE TO TRY AND MARK OUT "HABIT," NO.  
22 MR. FURR: YOUR HONOR, MOVE TO STRIKE. IT'S  
23 NONRESPONSIVE.  
24 THE COURT: I WILL STRIKE THE ANSWER. IT'S NOT  
25 RESPONSIVE TO THE QUESTION.  
26 WAS THE WORD "OBSESSION" THE WORD THAT YOU  
27 WROTE?  
28 THE WITNESS: WOULD YOU LIKE ME TO ANSWER?  
JUDITH ANN OSSA, CSR NO. 2310

0981

1 THE COURT: YES. THAT'S THE QUESTION.  
2 THE WITNESS: BEING AS RESPONSIVE AS I CAN, MR.  
3 FURR, I DID WRITE THE WORD "OBSESSION."  
4 MR. FURR: Q. IN FACT, DOCTOR, ONE OF THE  
5 REASONS THAT YOU LIKE TO DESCRIBE SMOKING AND NICOTINE AS  
6 ADDICTIVE IS BECAUSE YOU THINK THAT DOING SO TURNS THE  
7 TOBACCO INDUSTRY GREEN; CORRECT, SIR?  
8 A. NO, NOT CORRECT. IT WAS A JOKE. THE LAST  
9 SENTENCE OF THE ARTICLE WHICH YOU ARE GOING TO READ IN A FEW  
10 MOMENTS IS A JOKE.  
11 NO, I DON'T BELIEVE THAT.  
12 Q. SIR, YOU WROTE THAT:  
13 "SIMON CHAPMAN, DEPUTY DIRECTOR -- EXCUSE ME --  
14 "DEPUTY EDITOR OF TOBACCO CONTROL ONCE WROTE  
15 THAT 'ADDICTION' IS A HIGHLY EVOCATIVE WORD AND  
16 THE INDUSTRY TURN GREEN WHEN IT IS APPLIED TO  
17 SMOKING.' I BELIEVE WE SHOULD USE LANGUAGE THAT  
18 IS CLEARLY UNDERSTOOD, SCIENTIFICALLY ACCURATE  
19 AND DESIGNED TO TURN THE INDUSTRY GREEN"?  
20 CORRECT, SIR?  
21 A. THAT'S CORRECT. THE FIRST TWO WORDS, I BELIEVE.  
22 THE THIRD PART WAS JUST AN ATTEMPT TO BE A LITTLE HUMOROUS.  
23 Q. BUT YOU DID WRITE THAT IN THE TOBACCO CONTROL  
24 JOURNAL, DIDN'T YOU, SIR?  
25 A. I DID WRITE THAT.  
26 THE COURT: LET US KNOW WHEN YOU GET TO A SPOT  
27 FOR THE AFTERNOON RECESS. JUDITH IS GIVING ME THE EYE.  
28 MS. CHABER: YOUR HONOR, WHEN WE DO THAT, CAN WE  
JUDITH ANN OSSA, CSR NO. 2310

0982

1 HAVE A SIDEBAR?  
2 MR. FURR: IF I COULD DO ONE MORE DOCUMENT, IT  
3 WOULD BE HELPFUL.  
4 THE COURT: SURE.  
5 MR. FURR: Q. DR. DAVIS, THERE'S ANOTHER  
6 REASON WHY YOU LIKE TO USE THE WORD "ADDICTION" TO DESCRIBE  
7 SMOKING BEHAVIOR AND NICOTINE, AND THAT'S BECAUSE YOU  
8 BELIEVE THAT IT HELPS YOU TO PORTRAY SMOKERS AS VICTIMS OF  
9 THE TOBACCO INDUSTRY; IS THAT CORRECT, SIR?  
10 A. I'M SURE YOU ARE GOING TO PULL SOME QUOTE OUT  
11 FROM WHAT I WROTE 10 YEARS AGO THAT SAYS SOMETHING LIKE  
12 THAT.  
13 I DON'T KNOW THAT I WOULD CHARACTERIZE IT THAT  
14 WAY. I THINK IT'S HELPFUL FOR PEOPLE TO UNDERSTAND THAT

15 THIS IS MORE THAN JUST A HABIT, TAKING A SHOWER, EATING  
16 CHOCOLATE, HAVING A CUP OF COFFEE AFTER THEIR MEAL, EATING  
17 GUMMY BEARS.

18 THIS IS SOMETHING THAT GOES WAY BEYOND WHAT  
19 PEOPLE THINK OF AS HABITS. THAT'S THE POINT.

20 Q. DR. DAVIS, LET ME ASK YOU TO TAKE A LOOK AT THE  
21 ARTICLE I JUST HANDED YOU, WHICH IS TITLED "SMOKING: NEW  
22 FINDINGS, NEW CONTROVERSIES: SMOKING AS AN ADDICTION," BY  
23 "RONALD M. DAVIS M.D., DIRECTOR, U.S. OFFICE ON SMOKING AND  
24 HEALTH."

25 DID YOU WRITE THAT ARTICLE, SIR?

26 A. I DID.

27 Q. THAT WAS PUBLISHED IN JULY OF 1989 IN A MEDICAL  
28 JOURNAL TITLED "PRIMARY CARE & CANCERS," WASN'T IT, SIR?

JUDITH ANN OSSA, CSR NO. 2310

0983

1 A. YES.

2 Q. LET ME ASK YOU TO TAKE A LOOK AT THE FIRST  
3 PARAGRAPH, MIDDLE COLUMN.

4 DR. DAVIS, ISN'T IT CORRECT THAT YOU WROTE:  
5 "WHILE WE DON'T LABEL SMOKERS AS DRUG ADDICTS,  
6 WE ARE NOT BACKING AWAY FROM THE TERM ADDICTION.  
7 IT'S A DIFFICULT LINE TO WALK, AND THE WORD  
8 ADDICT ELICITS EVEN MORE NEGATIVE CONNOTATIONS  
9 THAN THE WORD ADDICTION. WE'RE TRYING TO PORTRAY  
10 PEOPLE AS VICTIMS OF THE TOBACCO COMPANIES WHICH  
11 SPEND INCREDIBLE AMOUNTS OF MONEY TO PROMOTE AN  
12 ADDICTING DRUG."

13 MS. CHABER: YOUR HONOR, I WOULD ASK TO HAVE THE  
14 NEXT PORTION READ, PLEASE.

15 MR. FURR: SURE. OF COURSE.

16 Q. "WE DON'T WANT THIS REPORT TO GIVE PEOPLE THE  
17 IMPRESSION THAT WE'RE SAYING THAT SMOKERS ARE  
18 WEAK. RATHER, SMOKERS HAVE THEIR BEHAVIOR  
19 CONTROLLED BY A POWERFULLY ADDICTING DRUG."  
20 THAT IS WHAT YOU WROTE, ISN'T IT, SIR?

21 A. IT IS.

22 Q. SO THIS INTEREST OF YOURS IN USING THE TERM  
23 "ADDICTION" IS TO PORTRAY SMOKERS AS VICTIMS OF THE TOBACCO  
24 INDUSTRY?

25 A. I'M NOT SURE THAT THERE IS A DIRECT CONNECTION  
26 BETWEEN THE TWO. IT'S IN THE SAME PARAGRAPH. IT DOESN'T  
27 SAY, "WE USE THE TERM 'ADDICTION' IN ORDER TO PORTRAY PEOPLE  
28 AS VICTIMS OF THE TOBACCO COMPANIES." THAT'S NOT WHAT IT

JUDITH ANN OSSA, CSR NO. 2310

0984

1 SAYS.

2 MR. FURR: I'M NOT GOING TO READ IT AGAIN.  
3 IT'S A GOOD TIME TO STOP, YOUR HONOR.

4 THE COURT: OKAY. JURORS, LET'S TAKE A  
5 20-MINUTE RECESS TO QUARTER TO 4:00. WE ARE GOING TO GO  
6 THIS AFTERNOON UNTIL APPROXIMATELY 4:30, BECAUSE I HAVE  
7 ANOTHER MATTER THIS AFTERNOON, SO WE ARE GOING TO GO TO  
8 ABOUT 4:30.

9 PLEASE CONTINUE TO FOLLOW THE ADMONITION. WE'LL  
10 SEE YOU BACK AT QUARTER TO 4:00.

11 (RECESS TAKEN FROM 3:25 TO 3:48 P.M.)

12 THE COURT: OKAY. MR. FURR, WE ARE BACK ON THE  
13 RECORD.

14 MR. FURR: MAY I PROCEED, YOUR HONOR?

15 THE COURT: YES, PLEASE.

16 MR. FURR: WHILE THE JURY WAS ON A BREAK, WE  
17 MARKED FOR IDENTIFICATION SOME OF THE EXHIBITS THAT WE HAD



18 USED WITH DR. DAVIS.  
19 THE COURT: OKAY. ARE THEY NEW NUMBERS?  
20 MR. FURR: WE MARKED AS EXHIBIT 6223 THE WORLD  
21 HEALTH ORGANIZATION EXPERT REPORT ON ADDICTION-PRODUCING  
22 DRUGS.  
23 THE COURT: OKAY. WHAT WAS THE DATE OF THAT?  
24 MR. FURR: 1964.  
25 THE COURT: OKAY.  
26 MR. FURR: WE MARKED AS EXHIBIT 6224 THE 1992  
27 TOBACCO CONTROL ARTICLE TITLED "THE LANGUAGE OF NICOTINE  
28 ADDICTION: PURGING THE WORD 'HABIT' FROM OUR LEXICON."  
JUDITH ANN OSSA, CSR NO. 2310

0985  
1 AND WE MARKED AS EXHIBIT 6225 THE JULY 1989  
2 ARTICLE TITLED "SMOKING: NEW FINDINGS, NEW CONTROVERSIES:  
3 SMOKING AS AN ADDICTION."  
4 THE COURT: LET ME JUST BE SURE I HAVE COPIES OF  
5 THESE.  
6 I HAVE 6225.  
7 6223 IS THE 1964 REPORT.  
8 AND 6224 IS THE ARTICLE THAT STARTS OUT "THE  
9 LANGUAGE OF NICOTINE"?  
10 MR. FURR: YES, YOUR HONOR.  
11 THE COURT: OKAY  
12 (DOCUMENTS MORE PARTICULARLY  
13 LISTED IN THE INDEX MARKED  
14 FOR IDENTIFICATION DEFENDANTS'  
15 EXHIBIT #S 6223, 6224 AND 6225)  
16 MR. FURR: Q. DR. DAVIS, I'D LIKE TO CONTINUE  
17 ASKING YOU SOME QUESTIONS ABOUT ADDICTION, BUT TO CHANGE OUR  
18 FOCUS AND TALK ABOUT WHAT ADDICTION MEANS WITH RESPECT TO  
19 WHETHER OR NOT PEOPLE CAN QUIT SMOKING CIGARETTES.  
20 DR. DAVIS, IT IS YOUR OPINION, SIR, ISN'T IT,  
21 THAT ALMOST EVERYONE, PERHAPS EVEN UP TO 99 PERCENT OF ALL  
22 SMOKERS WHO SMOKE ON A DAILY BASIS, ARE ADDICTED TO  
23 NICOTINE?  
24 A. I WOULD SAY THAT MOST DAILY SMOKERS ARE ADDICTED  
25 TO NICOTINE.  
26 Q. HAVEN'T YOU TESTIFIED IN THE PAST, SIR, THAT THAT  
27 WOULD BE UP TO 99 PERCENT OF DAILY SMOKERS?  
28 A. I DON'T RECALL.  
JUDITH ANN OSSA, CSR NO. 2310

0986  
1 Q. I WILL MOVE ON.  
2 DR. DAVIS, IS IT CORRECT, SIR, THAT YOU BELIEVE  
3 THAT, WITHOUT KNOWING ANYTHING OTHER THAN THE FACT THAT  
4 SOMEONE SMOKES ON A DAILY BASIS, THAT YOU CAN CONCLUDE THAT  
5 THEY ARE PROBABLY ADDICTED TO CIGARETTES?  
6 A. COULD YOU REPEAT THAT, PLEASE.  
7 Q. YES, SIR.  
8 IS IT CORRECT THAT YOU BELIEVE THAT, WITHOUT  
9 KNOWING ANYTHING OTHER THAN THAT SOMEONE SMOKES ON A DAILY  
10 BASIS, THAT YOU CAN CONCLUDE THAT THEY ARE PROBABLY ADDICTED  
11 TO NICOTINE?  
12 A. HERE IS THE WAY I WOULD ANSWER THAT QUESTION: IF  
13 YOU SAID TO ME, "SMOKER X SMOKES ON A DAILY BASIS, AND I'M  
14 NOT GOING TO TELL YOU ANYTHING ELSE ABOUT SMOKER X, IF YOU  
15 HAD TO SAY: DO YOU THINK THIS PERSON IS ADDICTED OR IS THIS  
16 PERSON NOT ADDICTED, YOU BEING A BETTING MAN, WHERE WOULD  
17 YOU PLACE YOUR MONEY?"  
18 I WOULD PLACE MY MONEY ON A DAILY SMOKER BEING  
19 ADDICTED. AND PROBABLY NINE TIMES OUT OF 10, I'D WIN THAT  
20 BET. I'D TAKE THAT BET. I'D LOSE MAYBE ONCE OUT OF 10

21 TIMES, BUT I'D TAKE THAT BET.

22 Q. DR. DAVIS, IS IT CORRECT THAT YOU BELIEVE THAT  
23 EVEN PEOPLE THAT SMOKE ONLY ONE CIGARETTE PER DAY CAN BE  
24 ADDICTED TO SMOKING?

25 A. LET'S PUT IT THIS WAY: I THINK, IN GENERAL, THE  
26 MORE ONE SMOKES, THE MORE LIKELY IT IS THAT A PERSON IS  
27 ADDICTED. I'M NOT SURE IT'S AN ALL-OR-NONE PHENOMENON.  
28 SOME PEOPLE ARE MORE HEAVILY ADDICTED THAN OTHERS.

JUDITH ANN OSSA, CSR NO. 2310

0987

1 I WOULD SAY A CHAIN SMOKER, WHO IS SMOKING THREE  
2 PACKS A DAY, LIGHTING UP ONE CIGARETTE WITH THE BURNING END  
3 OF THE PREVIOUS CIGARETTE, A PERSON WHO IS SMOKING THROUGH A  
4 TRACHEOTOMY HOLE, THE PERSON WHO SMOKE AFTER THEY HAVE HAD  
5 A HEART ATTACK, THOSE ARE VERY HEAVILY ADDICTED PERSONS.

6 THE PERSON WHO IS SMOKING FIVE CIGARETTES A DAY,  
7 PROBABLY, IN MOST CASES, IS STILL ADDICTED, BUT PROBABLY NOT  
8 AS HEAVILY ADDICTED AS THE OTHER PEOPLE I MENTIONED.

9 THE PERSON SMOKING ONE CIGARETTE A DAY, MANY OF  
10 THEM MAY NOT BE ADDICTED. SOME OF THEM MAY BE. THE PERSON  
11 SMOKING ONE CIGARETTE A MONTH, VERY LIKELY NOT TO BE  
12 ADDICTED.

13 SO THERE ARE GRADATIONS HERE. THERE'S A  
14 SPECTRUM.

15 I DON'T THINK YOU CAN SAY EVERY SMOKER WHO SMOKE  
16 ONE CIGARETTE. IS THIS EVERY SMOKER WHO SMOKE 20  
17 CIGARETTES A DAY? IS THIS EVERY SMOKER WHO SMOKE ONCE A  
18 MONTH?

19 Q. DR. DAVIS, IS IT POSSIBLE THAT PEOPLE SMOKE WHO  
20 ONLY ONE CIGARETTE PER MONTH ARE ADDICTED?

21 A. I WOULD SAY IT'S EXTREMELY UNLIKELY THAT THE  
22 PEOPLE WHO SMOKE ONE CIGARETTE A MONTH ARE ADDICTED.

23 I'D SAY, IF I WERE A BETTING MAN -- AND BY THE  
24 WAY, I'M NOT A BETTING MAN. WHEN I CAME HERE, I STOPPED IN  
25 LAS VEGAS FOR AN HOUR WITH SLOT MACHINES IN THE AIRPORT. I  
26 DIDN'T LAY A SINGLE NICKEL OR QUARTER INTO THE SLOT  
27 MACHINES.

28 BUT IF I WERE A BETTING MAN, I WOULD BET THAT A  
JUDITH ANN OSSA, CSR NO. 2310

0988

1 PERSON SMOKING ONE CIGARETTE A MONTH WAS NOT ADDICTED.

2 Q. YOU ARE NOT ADDICTED TO GAMBLING?

3 A. CORRECT.

4 Q. DR. DAVIS, SAYING THAT SOMEONE IS ADDICTED TO  
5 SMOKING CIGARETTES DOES NOT MEAN THAT THEY CANNOT QUIT  
6 SMOKING CIGARETTES, DOES IT, SIR?

7 A. NO. IT DOES NOT MEAN THAT.

8 Q. ADDICTED SMOKERS CAN AND DO QUIT SMOKING  
9 CIGARETTES EVERY DAY, DON'T THEY, SIR?

10 A. THAT'S CORRECT.

11 Q. I BELIEVE YOU TOLD MS. CHABER YESTERDAY THAT  
12 THERE ARE APPROXIMATELY 50 MILLION FORMER SMOKERS IN THE  
13 UNITED STATES; IS THAT CORRECT?

14 A. CORRECT.

15 Q. AND YOU BELIEVE THAT MANY OF THOSE FORMER SMOKERS  
16 WERE ADDICTED TO CIGARETTES AND NICOTINE, DON'T YOU?

17 A. CORRECT.

18 Q. AND I BELIEVE YOU TOLD MS. CHABER THAT  
19 APPROXIMATELY ONE AND A HALF MILLION PEOPLE QUIT SMOKING FOR  
20 GOOD EVERY YEAR IN THE UNITED STATES; IS THAT CORRECT, SIR?

21 A. WELL, I'M NOT SURE ABOUT "FOR GOOD."

22 MANY OF THEM QUIT FOR GOOD. SOME OF THEM MAY  
23 RELAPSE DOWN THE ROAD, BUT THEY QUIT DURING THE COURSE OF

24 THE YEAR, ONE AND A HALF MILLION EACH YEAR.  
25 Q. AND YOU BELIEVE THAT MANY OF THOSE ONE AND A HALF  
26 MILLION PEOPLE WHO QUIT EACH YEAR WERE ADDICTED TO  
27 CIGARETTES, DON'T YOU, SIR?  
28 A. YES.

JUDITH ANN OSSA, CSR NO. 2310

0989

1 Q. DR. DAVIS, YOU TESTIFIED YESTERDAY, I BELIEVE,  
2 THAT IT TAKES MORE THAN JUST WILLPOWER TO QUIT SMOKING; IS  
3 THAT CORRECT, SIR?  
4 A. YES.  
5 WELL, CAN I EXPLAIN THAT?  
6 Q. OF COURSE.  
7 A. I SAID THAT MOTIVATION IS ANOTHER WAY IN WHICH  
8 YOU CAN LOOK AT WILLPOWER. MOTIVATION IS VERY IMPORTANT.  
9 FOR SOME SMOKERS, MOTIVATION MAY BE ENOUGH FOR  
10 THEM TO QUIT. IF THEY'RE ONLY SMOKING A CIGARETTE A DAY,  
11 MAYBE IT DOESN'T TAKE ALL THAT MUCH FOR THEM TO QUIT.  
12 A PERSON WHO IS SMOKING TWO PACKS OR THREE PACKS  
13 A DAY, GENERALLY IT WILL TAKE MORE THAN MOTIVATION. IT WILL  
14 TAKE HELP, SKILLS, SUPPORT, MEDICATION, THOSE KINDS OF  
15 THINGS.  
16 Q. LET ME ASK YOU WHETHER YOU AGREE WITH THIS  
17 STATEMENT, DR. DAVIS: "FOR MANY SMOKERS, A GENUINE DESIRE  
18 TO QUIT AND, IF NECESSARY, PERSISTENT AND REPEATED ATTEMPTS  
19 TO QUIT MAY BE ALL THAT IS NECESSARY"?  
20 A. LET ME MAKE SURE I CAUGHT THAT WHOLE THING.  
21 "A GENUINE DESIRE TO QUIT AND REPEATED ATTEMPTS  
22 TO QUIT"?  
23 Q. "FOR MANY SMOKERS, A GENUINE DESIRE TO QUIT AND,  
24 IF NECESSARY, PERSISTENT AND REPEATED ATTEMPTS TO QUIT MAY  
25 BE ALL THAT IS NECESSARY."  
26 A. I WOULDN'T QUIBBLE WITH THAT. I PROBABLY SAID  
27 IT.  
28 ACTUALLY -- I MEAN, YOU'LL PROBABLY SHOW ME THAT  
JUDITH ANN OSSA, CSR NO. 2310

0990

1 I SAID IT 10 YEARS AGO. I WOULDN'T QUIBBLE WITH IT.  
2 WE COULD TALK ABOUT IT, ONE OF THOSE STATEMENTS.  
3 SMOKING BEHAVIOR IS COMPLEX.  
4 OKAY. I MEAN WE WOULD ALL, I SUSPECT, AGREE WITH  
5 THAT. IT'S DIFFICULT TO CHARACTERIZE QUITTING SMOKING IN  
6 ONE SENTENCE.  
7 Q. DR. DAVIS, NOT ONLY WOULD YOU NOT QUIBBLE. YOU  
8 WOULD AGREE THAT, FOR MANY SMOKERS, A GENERAL DESIRE TO QUIT  
9 AND, IF NECESSARY, PERSISTENT AND REPEATED ATTEMPTS TO QUIT  
10 MAY BE ALL THAT IS NECESSARY?  
11 A. MAY BE ALL THAT IS NECESSARY?  
12 Q. YES, SIR.  
13 A. YEAH, I WOULDN'T QUIBBLE WITH THAT. THAT SHOULD  
14 REMIND ME THAT I SAID IT.  
15 Q. I DON'T HAVE TO DO IT NOW.  
16 IN FACT, DOCTOR, ISN'T IT TRUE THAT ABOUT 90  
17 PERCENT OF ALL FORMER SMOKERS QUIT SMOKING WITHOUT USING ANY  
18 TYPE OF MEDICAL ASSISTANCE OR ANY SMOKING CESSATION PROGRAM  
19 OR ANY NICOTINE REPLACEMENT?  
20 A. THOSE FIGURES COME, AS I RECALL, FROM AN  
21 ANALYSIS, THE MOST RECENT ANALYSIS, IT WOULD BE, OF THE 1986  
22 ADULT USE OF TOBACCO SURVEY.  
23 AND THE PEOPLE WHO WE ASKED IN 1986 HOW THEY QUIT  
24 IF THEY WERE EX-SMOKERS DID NOT HAVE ACCESS TO MANY OF THE  
25 PRODUCTS THAT WE HAVE NOW, NICOTINE GUM, NICOTINE PATCH,  
26 ZYBAN.

27 SO THE WAY IN WHICH EX-SMOKERS QUIT 20 OR 15  
28 YEARS AGO MAY NOT BE THE WAY IN WHICH RECENT EX-SMOKERS HAVE  
JUDITH ANN OSSA, CSR NO. 2310

0991

1 QUIT.

2 BUT I WOULD AGREE WITH THE BASIC PREMISE, AND  
3 THAT IS IF YOU ASK THE VAST MAJORITY OF EX-SMOKERS: "DID  
4 YOU USE A FORMAL PROGRAM OR DID YOU USE A SPECIAL PRODUCT OR  
5 MEDICATION TO HELP YOU QUIT," PERHAPS THE MAJORITY WOULD SAY  
6 NO, THAT THEY JUST QUIT COLD TURKEY, ON THEIR OWN.

7 THESE DAYS, THOUGH, WE HAVE SO MANY DIFFERENT  
8 PRODUCTS AND METHODS TO HELP PEOPLE. I SUSPECT IF YOU DID A  
9 SURVEY TODAY, YOU'D HAVE MANY MORE THAN 10 PERCENT OF  
10 EX-SMOKERS WHO DID HAVE THRESHOLD ASSISTANCE IN QUITTING.

11 Q. I TAKE IT YOUR POINT IS, DOCTOR, THERE'S MORE  
12 ASSISTANCE FOR SMOKERS AVAILABLE TODAY FROM THE MEDICAL  
13 COMMUNITY FOR HELP IN QUITTING, IF THEY CHOOSE TO ACCESS  
14 THAT HELP?

15 A. CORRECT.

16 Q. I BELIEVE YOU TESTIFIED YESTERDAY ABOUT THE TYPES  
17 OF SYMPTOMS THAT SMOKERS SOMETIMES EXPERIENCE WHEN THEY STOP  
18 SMOKING; IS THAT CORRECT, DOCTOR?

19 A. YES.

20 Q. AND I BELIEVE YOU STATED THAT SMOKERS EXPERIENCE  
21 SYMPTOMS LIKE ANXIETY, IRRITABILITY, DIFFICULTY  
22 CONCENTRATING, INCREASED APPETITE, AND URGES TO SMOKE; IS  
23 THAT CORRECT, SIR?

24 A. YES.

25 Q. BUT WHEN SOMEONE STOPS SMOKING, THOSE SYMPTOMS  
26 DISAPPEAR VERY RAPIDLY, DON'T THEY, SIR?

27 A. IN SOME CASES.

28 Q. THE PEAK WITHDRAWAL SYMPTOMS THAT PEOPLE  
JUDITH ANN OSSA, CSR NO. 2310

0992

1 EXPERIENCE WHEN THEY STOP SMOKING USUALLY OCCUR WITHIN THE  
2 FIRST ONE TO TWO DAYS FOLLOWING CESSATION OF SMOKING; IS  
3 THAT CORRECT?

4 A. FOR MANY OF THE SYMPTOMS, THAT'S RIGHT.

5 I THINK I STATED MANY TIMES IN THE PAST, PERHAPS  
6 IN OUR OTHER DISCUSSIONS, THAT CRAVING IS A SYMPTOM OF  
7 NICOTINE WITHDRAWAL THAT MAY LAST MONTHS OR EVEN YEARS.

8 I'VE READ MATERIAL FROM DR. BENOWITZ WHERE HE  
9 TALKS ABOUT A DYSPHORIC FEELING, A FEELING THAT "I JUST -- I  
10 JUST DON'T FEEL RIGHT" THAT SOME EX-SMOKERS MAY HAVE THAT  
11 MAY LAST WEEKS OR MONTHS.

12 SO I THINK THERE ARE SOME WITHDRAWAL SYMPTOMS  
13 THAT MAY LAST FOR A LONG TIME, ALTHOUGH MOST OF THE ONES  
14 THAT I MENTIONED WOULD PEAK WITHIN THE FIRST FEW DAYS OF  
15 QUITTING.

16 Q. AND WOULD DISAPPEAR RAPIDLY THEREAFTER; CORRECT?

17 A. CORRECT.

18 Q. OBVIOUSLY, DR. DAVIS, THOSE SYMPTOMS THAT SMOKERS  
19 SOMETIMES EXPERIENCE WHEN THEY STOP SMOKING DON'T MAKE IT  
20 IMPOSSIBLE FOR SMOKERS TO QUIT SMOKING, DO THEY?

21 A. NO.

22 Q. DR. DAVIS, I THINK YOU MENTIONED YESTERDAY THAT  
23 YOU'RE INVOLVED WITH A SMOKING CESSATION CLINIC AT THE  
24 HOSPITAL THAT YOU WORK IN; IS THAT CORRECT?

25 A. YES, AT THE HEALTH CARE ORGANIZATION WHERE I  
26 WORK. IT'S MORE THAN JUST ONE HOSPITAL.

27 Q. I UNDERSTAND YOU DON'T -- YOU DON'T TELL PATIENTS  
28 IN THAT CLINIC THAT THEY WON'T BE ABLE TO STOP SMOKING, DO

JUDITH ANN OSSA, CSR NO. 2310

0993

1 YOU, SIR?

2 A. NO. WE TELL THEM THAT IT IS USUALLY VERY  
3 DIFFICULT TO QUIT. FOR SOME PEOPLE, IT MIGHT BE THE MOST  
4 DIFFICULT THING THEY EVER DO.

5 BUT FORTUNATELY, THERE'S HELP, THERE'S TREATMENT  
6 HELP. THERE ARE MEDICATIONS AVAILABLE TO HELP PEOPLE QUIT.

7 Q. AND DON'T YOU ALSO TELL THEM, SIR, THAT THE FIRST  
8 STEP TO QUITTING IS TO BE MOTIVATED TO QUIT?

9 A. WE DO SAY THAT MOTIVATION IS VERY IMPORTANT, THAT  
10 IT'S IMPORTANT, THAT IT'S IMPORTANT SOMEBODY BE MOTIVATED.

11 TYPICALLY, WE NEED TO MAKE SURE THAT A SMOKER IS  
12 MOTIVATED TO QUIT BEFORE WE GO THE IMPORTANT NEXT STEP,  
13 WHICH IS TO GIVE THEM ASSISTANCE IN QUITTING.

14 Q. EVEN IF SOMEONE IN YOUR CLINIC FAILS THE FIRST  
15 TWO OR THREE TIMES, YOU CONTINUE ENCOURAGING THEM TO MAKE  
16 THE EFFORT TO QUIT, DON'T YOU, DOCTOR?

17 A. YES.

18 Q. YOU DON'T TELL THEM THAT JUST BECAUSE THEY FAILED  
19 TWO OR THREE TIMES, THAT THEY WON'T BE ABLE TO QUIT, DO YOU,  
20 SIR?

21 A. NO.

22 Q. IN FACT, FOR MANY SMOKERS, IT TAKES THREE OR FOUR  
23 SERIOUS QUIT ATTEMPTS BEFORE THEY'RE ABLE TO QUIT SMOKING;  
24 IS THAT CORRECT?

25 A. THAT'S RIGHT.

26 Q. DR. DAVIS, ONE OF YOUR CREDENTIALS THAT YOU  
27 DIDN'T MENTION YESTERDAY IS THAT YOU HAVE A MASTER'S DEGREE;  
28 IS THAT CORRECT?

JUDITH ANN OSSA, CSR NO. 2310

0994

1 A. YES.

2 Q. AND THAT MASTER'S DEGREE IS IN PUBLIC POLICY; IS  
3 THAT RIGHT?

4 A. CORRECT.

5 Q. PUBLIC POLICY IS SOMETHING DIFFERENT THAN PUBLIC  
6 HEALTH, I TAKE IT?

7 A. THEY OVERLAP. THEY ARE INTERRELATED IN MANY  
8 CASES, BUT THEY ARE DISTINCT DISCIPLINES.

9 Q. PUBLIC POLICY STUDIES INCLUDE, FOR EXAMPLE,  
10 EXAMINING HOW FEDERAL, STATE AND LOCAL GOVERNMENTS ENACT  
11 PUBLIC POLICY; IS THAT CORRECT, SIR?

12 A. YES. THAT'S PART OF IT.

13 Q. NOW, CREATING AND SETTING FORTH A PUBLIC POLICY  
14 POSITION IS DIFFERENT THAN THE MANNER IN WHICH SCIENTISTS  
15 DETERMINE SCIENTIFIC OR MEDICAL FACTS; IS THAT CORRECT?

16 A. I'M NOT SURE WHAT YOU MEAN.

17 Q. WELL, THEY'RE DIFFERENT PROCESSES, AREN'T THEY?

18 A. THE PROCESS OF ENACTING A LAW AND THE PROCESS OF  
19 DOING A SCIENTIFIC STUDY?

20 Q. WELL, THE PROCESS OF CREATING A PUBLIC POLICY  
21 POSITION FROM REACHING SCIENTIFIC CONCLUSIONS, THOSE ARE TWO  
22 DIFFERENT APPROACHES, AREN'T THEY, SIR?

23 A. YES. I MEAN, CREATING POLICY IS DIFFERENT THAN  
24 DOING RESEARCH, YES.

25 Q. WELL, THEY ARE ALSO DIFFERENT BECAUSE, SOMETIMES,  
26 PUBLIC HEALTH AND OTHER TYPES OF POLICY DECISIONS HAVE TO BE  
27 MADE BEFORE ALL THE SCIENTIFIC FACTS ARE IN; CORRECT, SIR?

28 A. YES, THAT'S TRUE. I MEAN IN SOME CASES, ALL THE  
JUDITH ANN OSSA, CSR NO. 2310

0995

1 SCIENTIFIC FACTS WILL NEVER BE AVAILABLE.

2 SO IF WE WAITED UNTIL ALL OF THE SCIENTIFIC FACTS

3 ARE AVAILABLE, I SUPPOSE WE WOULD NEVER ENACT ANY POLICIES.

4 Q. LET ME ASK YOU ABOUT A SPECIFIC PUBLIC POLICY  
5 VIEW THAT YOU HOLD REGARDING CIGARETTE SMOKING.

6 DR. DAVIS, YOU BELIEVE THAT A COMPANY OR AN  
7 EMPLOYER SHOULD HAVE THE RIGHT TO REFUSE TO HIRE PEOPLE  
8 BECAUSE THEY CHOOSE TO SMOKE CIGARETTES; IS THAT CORRECT,  
9 SIR?

10 A. IF IT'S AN AMERICAN LUNG ASSOCIATION THAT DOESN'T  
11 THINK IT OUGHT TO HIRE SMOKERS; IF IT'S A FIRE DEPARTMENT  
12 THAT DOESN'T WANT TO HAVE FIREFIGHTERS ALSO BREATHING IN  
13 TOBACCO SMOKE AS WELL AS SMOKE FROM FIRES; IF IT'S A COMPANY  
14 THAT HAS A FACTORY WHERE YOU'RE EXPOSED TO TOXINS IN THE  
15 WORKPLACE, THEY DON'T WANT TO HAVE SMOKERS WHO ARE BOTH  
16 BREATHING IN TOBACCO SMOKE PLUS TOXINS IN THE WORKPLACE. I  
17 THINK A COMPANY OUGHT TO BE ABLE TO MAKE A DECISION ON THAT,  
18 AS LONG AS THE LEGISLATION DOESN'T PREVENT THEM FROM DOING  
19 THAT.

20 Q. DR. DAVIS, ISN'T IT ALSO TRUE THAT YOU BELIEVE  
21 THAT COMPANIES SHOULD BE FREE TO REFUSE TO HIRE SMOKERS SO  
22 THAT THEY CAN AVOID PAYING THE INCREASED HEALTH CARE COSTS  
23 OF SMOKERS?

24 A. IF A COMPANY DECIDES THAT HAVING SMOKERS ON ITS  
25 PAYROLL IS BUSTING ITS BUDGET, AND ESPECIALLY IF THE SMOKERS  
26 WOULD BE EXPOSED TO ANOTHER TOXINS, THEY DON'T WANT PEOPLE,  
27 AS I SAID, SMOKING CIGARETTES PLUS BREATHING IN FUMES IN THE  
28 WORKPLACE. IF THEY DECIDE THAT THEY DON'T WANT TO HIRE

JUDITH ANN OSSA, CSR NO. 2310

0996

1 SMOKERS, I THINK THEY HAVE -- I THINK THEY HAVE THE RIGHT TO  
2 ADOPT A POLICY THAT THEY THINK IS BEST FOR THEM, AS LONG AS  
3 THE U.S. CONSTITUTION OR FEDERAL LAW OR STATE LAW DOESN'T  
4 PREVENT THEM FROM DOING THAT.

5 Q. LET ME TALK TO YOU NOW, DR. DAVIS, A LITTLE MORE  
6 ABOUT YOUR MEDICAL TRAINING AND EXPERIENCE.

7 FIRST, THERE IS A MEDICAL SPECIALTY CALLED  
8 TOXICOLOGY, ISN'T THERE, SIR?

9 A. WHEN YOU SAY "MEDICAL SPECIALTY," DO YOU MEAN A  
10 BOARD-CERTIFIED SPECIALTY?

11 Q. YES.

12 A. IT'S NOT A BOARD-CERTIFIED SPECIALTY. IT'S MORE  
13 A FIELD OR A DISCIPLINE. I WOULDN'T CALL IT A SPECIALTY, A  
14 SPECIALTY OF MEDICINE. IT'S A FIELD OF SCIENCE.

15 Q. OKAY. THERE IS A FIELD OF SCIENCE KNOWN AS  
16 TOXICOLOGY; CORRECT?

17 A. YES.

18 Q. WOULD YOU EXPLAIN TO THE JURY WHAT TOXICOLOGISTS  
19 DO.

20 A. TOXICOLOGIST LOOK AT CHEMICALS, COMPOUNDS, GASES,  
21 AND THEY TRY TO ASSESS HOW DANGEROUS EXPOSURE TO THOSE  
22 CHEMICALS OR GASES MIGHT BE, THEIR EFFECTS ON HUMAN HEALTH,  
23 ANIMAL HEALTH, WHATEVER THEY HAPPEN TO BE LOOKING AT.

24 Q. AND YOU ARE NOT A TOXICOLOGIST, ARE YOU, SIR?

25 A. NO, I'M NOT A TOXICOLOGIST.

26 Q. THERE ARE DOCTORS WHO SPECIALIZE IN DIAGNOSING  
27 AND TREATING CANCER PATIENTS CALLED ONCOLOGISTS; IS THAT  
28 CORRECT, SIR?

JUDITH ANN OSSA, CSR NO. 2310

0997

1 A. THAT IS.

2 Q. YOU'RE NOT AN ONCOLOGIST, ARE YOU, SIR?

3 A. NO, I'M NOT.

4 Q. ON DIRECT EXAMINATION BY MS. CHABER, DR. DAVIS, I  
5 BELIEVE YOU TESTIFIED THAT YOU DON'T HAVE DAY-TO-DAY

6 INVOLVEMENT WITH PATIENT CARE; IS THAT CORRECT, SIR?  
7 A. THAT'S CORRECT.  
8 Q. IS IT ALSO CORRECT THAT YOU'VE HAD VERY LITTLE  
9 DAY-TO-DAY INVOLVEMENT WITH PATIENT CARE FOR THE LAST 15  
10 YEARS OR SO?  
11 A. THAT'S CORRECT. I PRACTICE PREVENTIVE MEDICINE,  
12 AND WE LOOK AT THE COMMUNITY AS OUR PATIENT.  
13 Q. IN FACT, I GUESS THE LAST TIME YOU HAD  
14 SIGNIFICANT DAY-TO-DAY INVOLVEMENT WITH PATIENT CARE WAS  
15 WHEN YOU WERE A NEW DOCTOR DOING YOUR INTERNSHIP IN THE  
16 MID-1980'S; IS THAT CORRECT?  
17 A. THAT'S CORRECT.  
18 Q. DR. DAVIS, IS IT ALSO CORRECT THAT SINCE YOUR  
19 MEDICAL TRAINING AS AN INTERN CONCLUDED IN 1984, THAT YOU  
20 HAVE NOT PERSONALLY DIAGNOSED OR TREATED A CASE OF LUNG  
21 CANCER?  
22 A. THAT'S CORRECT.  
23 Q. DR. DAVIS, YOU TESTIFIED TODAY AS TO YOUR OPINION  
24 AS TO WHAT CAUSED MRS. WHITELEY'S LUNG CANCER, DIDN'T YOU,  
25 SIR?  
26 A. YES.  
27 Q. NOW, YOU'RE NOT THE TYPE OF DOCTOR THAT OTHER  
28 DOCTORS CONSULT FOR ASSISTANCE IN DETERMINING WHAT CAUSES A  
JUDITH ANN OSSA, CSR NO. 2310

0998

1 CASE OF LUNG CANCER IN AN INDIVIDUAL, ARE YOU, SIR?  
2 A. WELL, GENERALLY, DOCTORS WOULD MAKE A DIAGNOSIS  
3 OF LUNG CANCER, AND THEY MAKE A DECISION ON THEIR OWN WHAT  
4 CAUSED THE LUNG CANCER.  
5 GENERALLY SPEAKING, IF THEY HAD A PATIENT WHO HAD  
6 BEEN SMOKING FOR 25 YEARS, SMOKING CIGARETTES, AND DIDN'T  
7 HAVE ANY IMPORTANT RISK -- OTHER IMPORTANT RISK FACTORS FOR  
8 LUNG CANCER, THEY WOULD MOST LIKELY CONCLUDE THAT CIGARETTE  
9 SMOKING CAUSED THEIR LUNG CANCER.  
10 THEY WOULD NOT NEED TO CONSULT SOMEBODY SUCH AS  
11 MYSELF ABOUT THAT. IT WOULD BE SO OBVIOUS TO THEM, THEY  
12 WOULDN'T HAVE TO RELY ON A CONSULTATION.  
13 MR. FURR: MOVE TO STRIKE THE ANSWER AS  
14 NONRESPONSIVE.  
15 THE COURT: I WILL STRIKE THE ANSWER.  
16 MR. FURR: Q. DR. DAVIS, YOU DO NOT GET  
17 CONSULTED BY OTHER DOCTORS FOR HELP IN DETERMINING THE CAUSE  
18 OF LUNG CANCER IN PATIENTS, DO YOU, SIR?  
19 A. NO.  
20 Q. IN FACT, YOU HAVE VERY LITTLE EXPERIENCE IN  
21 DETERMINING THE CAUSE OF LUNG CANCER IN AN INDIVIDUAL, DO  
22 YOU, SIR?  
23 A. I WOULD DISAGREE WITH THAT.  
24 Q. SIR, ISN'T IT CORRECT THAT IN THE PAST 15 YEARS,  
25 THE ONLY TIMES THAT YOU HAVE BEEN INVOLVED IN DETERMINING  
26 THE CAUSE OF LUNG CANCER IN AN INDIVIDUAL IS WHEN YOU HAVE  
27 GOTTEN INVOLVED IN LITIGATION, SUCH AS THIS CASE?  
28 A. IN A FORMAL WAY, THAT WOULD BE CORRECT.  
JUDITH ANN OSSA, CSR NO. 2310

0999

1 Q. LET ME BE CLEAR ABOUT SOMETHING ELSE, DOCTOR.  
2 YOU NEVER PERFORMED ANY TYPE OF MEDICAL EXAMINATION ON  
3 MRS. WHITELEY, DID YOU?  
4 A. NO.  
5 Q. YOU WERE NOT CONSULTED BY ANY OF HER PHYSICIANS  
6 REGARDING HER DIAGNOSIS OR THE CAUSE OF HER LUNG CANCER,  
7 WERE YOU, SIR?  
8 A. NO.

9 Q. IN FACT, WHEN YOU FORMED YOUR OPINIONS IN THIS  
10 CASE, YOU HAD NEVER MET MRS. WHITELEY, HAD YOU?  
11 A. NO.  
12 Q. YOUR INVOLVEMENT IN THE CASE, DR. DAVIS,  
13 OBVIOUSLY YOU CAME AT A REQUEST FROM PLAINTIFFS' COUNSEL TO  
14 APPEAR AS A WITNESS; CORRECT?  
15 A. YES.  
16 Q. LET ME ASK YOU A FEW QUESTIONS ABOUT THE TOPIC  
17 THAT YOU TESTIFIED ON TODAY, DOCTOR, AND THAT'S THE TOPIC OF  
18 PUBLIC AWARENESS OF THE HEALTH RISK OF CIGARETTE SMOKING.  
19 YOU TESTIFIED ON THAT TODAY, DIDN'T YOU, SIR?  
20 A. YES.  
21 Q. AND I BELIEVE TODAY, IN PART, WHAT YOU DID WAS  
22 YOU TESTIFIED ABOUT THE CHANGES THAT HAD OCCURRED IN PUBLIC  
23 AWARENESS BETWEEN 1964 AND 1989 REGARDING THE HEALTH RISK OF  
24 SMOKING CIGARETTES; IS THAT CORRECT?  
25 A. YES.  
26 Q. I WANT TO BACK UP A LITTLE BIT IN TIME, DOCTOR.  
27 LET ME ASK YOU FIRST: ISN'T IT TRUE THAT THE  
28 QUESTION OF WHETHER THERE IS A LINK BETWEEN TOBACCO AND  
JUDITH ANN OSSA, CSR NO. 2310

1000

1 DISEASE HAS BEEN RECOGNIZED FOR CENTURIES?  
2 A. WHAT DO YOU MEAN BY "RECOGNIZED"?  
3 Q. WELL, DOCTORS AND OTHER PEOPLE HAVE QUESTIONED  
4 AND CONSIDERED WHETHER OR NOT THERE IS A LINK BETWEEN  
5 SMOKING TOBACCO AND DISEASE FOR CENTURIES, HAVEN'T THEY?  
6 A. THERE ARE HISTORICAL WRITINGS, VERY FAMOUS QUOTES  
7 FROM KING JAMES I FROM SEVERAL HUNDRED YEARS AGO, I GUESS.  
8 I WAS NEVER VERY GOOD AT HISTORY.  
9 THERE ARE SOME HISTORICAL COMMENTS THAT WERE MADE  
10 THAT TALK ABOUT THE DAMAGES THAT SMOKING DOES TO YOUR LUNGS,  
11 YOUR HEART, YOUR BRAIN AND SO ON.  
12 AND I WOULD SAY THAT THOSE COMMENTS FROM 80 OR  
13 100 OR 200 YEARS AGO WERE NOT REALLY BASED ON SCIENCE LIKE  
14 THEY ARE TODAY, LIKE THEY BEGAN TO BE BASED IN THE 1950S,  
15 '60S AND '70S.  
16 SO YES, THERE WERE HISTORICAL STATEMENTS MADE A  
17 LONG TIME AGO, FOR CENTURIES, AS YOU PUT IT, BUT THEY  
18 WEREN'T BASED ON SCIENCE LIKE THEY ARE TODAY.  
19 Q. PEOPLE BELIEVED THAT THERE MIGHT BE A LINK  
20 BETWEEN SMOKING TOBACCO AND DEVELOPING DISEASE EVEN BEFORE  
21 THE MODERN SCIENTIFIC STUDIES HAD BEEN CONDUCTED ON THAT  
22 TOPIC; CORRECT, SIR?  
23 A. MR. FURR --  
24 MS. CHABER: OBJECTION. VAGUE AND AMBIGUOUS AS  
25 TO "PEOPLE."  
26 THE COURT: SUSTAINED.  
27 MR. FURR: Q. DR. DAVIS, DOCTORS AND  
28 SCIENTISTS BELIEVED THERE MIGHT BE A LINK BETWEEN SMOKING  
JUDITH ANN OSSA, CSR NO. 2310

1001

1 TOBACCO AND DEVELOPING DISEASE LONG BEFORE THE FIRST MODERN  
2 SCIENTIFIC STUDIES APPEARED IN THE 1950S; CORRECT?  
3 A. I'M NOT PREPARED TO ACCEPT THAT. YOU SAY  
4 "DOCTORS AND SCIENTISTS" AS IF ALL DOCTORS OR MOST DOCTORS  
5 AND MOST SCIENTISTS BELIEVED THAT.  
6 I DON'T THINK THERE IS A SHRED OF EVIDENCE TO  
7 BACK THAT UP. YOU MIGHT BE ABLE TO FIND A QUOTE FROM THIS  
8 SCIENTIST OR THAT DOCTOR FROM TWO HUNDRED YEARS AGO.  
9 BUT THERE IS NO EVIDENCE THAT ALL OR MOST OR EVEN  
10 A LOT OF THEM FELT THAT WAY.  
11 Q. DR. DAVIS, ISN'T IT CORRECT THAT YOU'VE WRITTEN



12 THAT THE ISSUE OF TOBACCO AND HEALTH HAS BEEN AROUND FOR  
13 CENTURIES?  
14 A. I WROTE THAT. AND I QUOTED ONE -- OR ONE OF THE  
15 STATEMENTS THAT YOU JUST REFERRED TO, SIR FRANCIS BACON, I  
16 THINK IS PROBABLY THE QUOTE THAT YOU'RE REFERRING TO. HE  
17 WROTE ABOUT THE ADDICTING QUALITIES OF NICOTINE. KING JAMES  
18 I, I THINK, SULTAN MURAD IV WROTE ABOUT SMOKING.  
19 THESE ARE ISOLATED QUOTES. I HAVE NO EVIDENCE AT  
20 ALL, AND I DON'T THINK ANYBODY DOES, TO SHOW THAT A LARGE  
21 NUMBER OR THE MAJORITY OF SCIENTISTS OR DOCTORS FELT THAT  
22 WAY 100 OR 200, 300 YEARS AGO.  
23 Q. DR. DAVIS, WHEN THE 1964 SURGEON GENERAL'S REPORT  
24 WAS RELEASED, IT WAS WIDELY DESCRIBED IN NEWSPAPERS AND  
25 MAGAZINES ACROSS THE COUNTRY, WASN'T IT, SIR?  
26 A. IT DID GET A LOT OF PUBLICITY, YES.  
27 Q. DR. DAVIS, YOU'RE FAMILIAR WITH THE FEDERAL  
28 CIGARETTE LABELING AND ADVERTISING ACT THAT REQUIRES CERTAIN  
JUDITH ANN OSSA, CSR NO. 2310

1002  
1 WARNINGS TO APPEAR ON THE SIDE OF CIGARETTE PACKS, AREN'T  
2 YOU, SIR?  
3 A. YES. THE ONE ADOPTED IN 1965 IS THAT THE ONE  
4 YOU'RE REFERRING TO.  
5 Q. THAT WAS THE FIRST, WASN'T IT, SIR?  
6 A. YES.  
7 Q. THE FIRST HEALTH WARNING WENT ON CIGARETTE PACKS  
8 IN 1966; IS THAT CORRECT?  
9 A. CORRECT, BASED ON THE 1965 LEGISLATION.  
10 Q. AND BETWEEN 1966 AND LATE 1969, CONGRESS REQUIRED  
11 EACH PACK OF CIGARETTES TO CARRY A WARNING THAT STATED  
12 "CAUTION: CIGARETTE SMOKING MAY BE HAZARDOUS TO YOUR  
13 HEALTH"; IS THAT CORRECT, SIR?  
14 A. RIGHT. "CIGARETTE SMOKING MAY BE HAZARDOUS TO  
15 YOUR HEALTH"; THAT'S CORRECT.  
16 Q. AND THEN, IN 1970, CONGRESS CHANGED THE WORDING;  
17 RIGHT, DR. DAVIS?  
18 A. 1969.  
19 Q. RIGHT?  
20 A. THE LEGISLATION WAS CHANGED. AND THE NEW WARNING  
21 WENT INTO PLACE IN 1970. I BELIEVE THAT IS WHAT YOU SAID.  
22 Q. YES.  
23 A. IT WAS WITHIN A YEAR OR SO.  
24 Q. AND THAT WARNING WAS IN PLACE BETWEEN 1970 AND  
25 1985; IS THAT CORRECT, SIR?  
26 A. YES.  
27 Q. AND THAT WARNING STATED: "WARNING: THE SURGEON  
28 GENERAL HAS DETERMINED THAT CIGARETTE SMOKING IS DANGEROUS  
JUDITH ANN OSSA, CSR NO. 2310

1003  
1 TO YOUR HEALTH," DIDN'T IT, SIR?  
2 A. YES.  
3 Q. AND THEN IN 1985, CONGRESS AGAIN CHANGED THE  
4 WARNINGS; CORRECT, SIR?  
5 A. 1980 -- 1984 WAS WHEN THE LAW WAS PASSED. AND I  
6 BELIEVE IT WENT INTO EFFECT IN '85.  
7 Q. AND A NEW SET OF WARNINGS APPEARED ON THE SIDE OF  
8 CIGARETTE PACKS?  
9 A. YES.  
10 Q. A SERIES OF FOUR ROTATING WARNINGS BEGAN  
11 APPEARING ON THE SIDE OF CIGARETTE PACKS?  
12 A. CORRECT.  
13 Q. ONE OF THOSE WARNINGS STATED: "SURGEON GENERAL'S  
14 WARNING: SMOKING CAUSES LUNG CANCER, HEART DISEASE,

15 EMPHYSEMA AND MAY COMPLICATE PREGNANCY"; IS THAT CORRECT,  
16 SIR?  
17 A. YES.  
18 Q. THE SECOND WARNING STATED: "SURGEON GENERAL'S  
19 WARNING: QUITTING SMOKING NOW GREATLY REDUCES SERIOUS RISK  
20 TO YOUR HEALTH," DIDN'T IT, SIR?  
21 A. YES.  
22 Q. THERE WAS A THIRD WARNING THAT STATED: "SURGEON  
23 GENERAL'S WARNING: SMOKING BY PREGNANT WOMEN MAY RESULT IN  
24 FETAL INJURY, PREMATURE BIRTH AND LOW BIRTH WEIGHT";  
25 CORRECT?  
26 A. YES.  
27 Q. AND THERE WAS A FOURTH WARNING STATING: "SURGEON  
28 GENERAL'S WARNING: CIGARETTE SMOKE CONTAINS CARBON

JUDITH ANN OSSA, CSR NO. 2310

1004

1 MONOXIDE"; IS THAT CORRECT?  
2 A. YES.  
3 Q. CONGRESS REQUIRED THAT THOSE WARNINGS BE PUT ON  
4 THE SIDE OF EVERY PACK OF CIGARETTES, FILTERED, NONFILTERED,  
5 LOW-TAR AND NICOTINE, ULTRA LOW-TAR AND NICOTINE, IT DOESN'T  
6 MATTER; THEY WERE ON EACH PACK OF CIGARETTES; CORRECT, SIR?  
7 A. YES.  
8 Q. AND THE COMPANIES WERE REQUIRED TO PLACE THOSE  
9 WARNINGS ON EACH PACK AND TO ROTATE THE WARNINGS ON THE  
10 PACKS; CORRECT, SIR?  
11 A. ROTATE THE FOUR THAT BEGAN IN 1985; THAT'S  
12 CORRECT.  
13 Q. AND THE COMPANIES HAVE ALWAYS COMPLIED WITH THOSE  
14 REQUIREMENTS, HAVEN'T THEY, SIR?  
15 A. AS FAR AS I UNDERSTAND, YES.  
16 Q. IN FACT, YOU CONDUCTED A STUDY IN WHICH YOU FOUND  
17 THAT THE COMPANIES WERE COMPLYING WITH THE REQUIREMENT TO  
18 PLACE THE ROTATING WARNINGS ON THE PACKS, DIDN'T YOU, SIR?  
19 A. THAT'S RIGHT.  
20 Q. DR. DAVIS, THIS MORNING, WHEN YOU SHOWED EXHIBIT  
21 1814, I BELIEVE IT WAS, TO THE JURY, YOU CALCULATED THE  
22 NUMBER OF TIMES THAT MRS. WHITELEY WOULD HAVE TAKEN A PUFF  
23 ON A CIGARETTE DURING THE YEARS THAT SHE WAS SMOKING; IS  
24 THAT CORRECT, SIR?  
25 A. I CALCULATED THE TOTAL NUMBER OF PUFFS SHE TOOK  
26 OVER HER SMOKING HISTORY.  
27 Q. I WANT TO DO A SLIGHTLY DIFFERENT CALCULATION,  
28 BASED ON HER SMOKING HISTORY.

JUDITH ANN OSSA, CSR NO. 2310

1005

1 MRS. WHITELEY SMOKED FOR ABOUT 20 YEARS; IS THAT  
2 CORRECT, SIR?  
3 A. NO.  
4 Q. ABOUT 25 YEARS; CORRECT?  
5 A. THAT'S CLOSER. FROM '72 TO '98. MORE LIKE 26,  
6 27 YEARS.  
7 Q. 26 YEARS.  
8 THE COURT: AFTER YOU GET DONE WITH THIS LINE OF  
9 INQUIRY, LET US KNOW, BECAUSE I NEED TO RECESS.  
10 MR. FURR: YES, YOUR HONOR.  
11 Q. ON AVERAGE, YOU BELIEVE, IN THOSE 26 YEARS, THAT  
12 SHE SMOKED ABOUT A PACK OF CIGARETTES A DAY; IS THAT  
13 CORRECT, SIR?  
14 A. OVER THE ENTIRE HISTORY OF HER SMOKING, I  
15 ESTIMATE 22.4 CIGARETTES A DAY.  
16 Q. OKAY.  
17 A. SO A LITTLE OVER A PACK A DAY.

18 Q. (WRITING ON BOARD)  
19 AND YOU BELIEVE SHE SMOKED VIRTUALLY EVERY DAY OF  
20 THE YEAR, DON'T YOU, SIR?  
21 A. I ASSUME SO.  
22 Q. WASN'T THAT THE ASSUMPTION YOU USED IN THE  
23 CALCULATION THAT YOU DID?  
24 A. YES.  
25 Q. IF WE WERE TO MULTIPLY THE 26 YEARS THAT SHE  
26 SMOKED BY THE 365 DAYS PER YEAR BY THE 22 CIGARETTES PER  
27 DAY, I CALCULATE THAT SHE WOULD HAVE SMOKED, BETWEEN 1972  
28 AND 1998, AROUND 230,000 CIGARETTES.

JUDITH ANN OSSA, CSR NO. 2310

1006

1 DOES THAT SOUND RIGHT TO YOU, SIR?  
2 A. WELL, I CAME UP WITH 182,500, CIGARETTES, BUT THE  
3 SAME BALLPARK.  
4 Q. SO APPROXIMATELY --  
5 A. I'M SORRY. I MISREAD MY NOTES.  
6 WHAT FIGURE DID YOU SAY?  
7 Q. APPROXIMATELY 230,000 CIGARETTES.  
8 A. I'M SORRY. I WAS LOOKING AT THE CIGARETTES FOR  
9 THE 20-YEAR PERIOD, 1979 TO 1988.  
10 THE TOTAL FIGURE THAT I HAD WAS 220,825.  
11 SO YOU COULD SAY 200, 220, 230. I DON'T KNOW IF  
12 IT'S GOING TO MAKE A DIFFERENCE IN WHAT YOU'RE TRYING TO  
13 SHOW.  
14 Q. MRS. WHITELEY BEGAN SMOKING AFTER THE WARNINGS  
15 BEGAN APPEARING ON THE SIDE OF THE PACKS; IS THAT CORRECT,  
16 SIR?  
17 A. SHE BEGAN -- I'VE JUST GOT TO MAKE SURE I GET MY  
18 DATES STRAIGHT.  
19 YOU'RE TALKING ABOUT THE FIRST WARNING?  
20 Q. YES, SIR.  
21 A. YES, THAT'S TRUE.  
22 Q. SO WHILE SHE WAS A SMOKER, MRS. WHITELEY TOOK A  
23 CIGARETTE OUT OF A PACK OF CIGARETTES THAT HAD A WARNING ON  
24 THE SIDE OF IT ABOUT 230,000 TIMES; IS THAT CORRECT, SIR?  
25 A. YES.  
26 Q. IN THE 20 YEARS THAT SHE CONTINUED TO SMOKE AFTER  
27 SHE WAS 18 YEARS OLD, SHE TOOK A CIGARETTE OUT OF A PACK OF  
28 CIGARETTES THAT HAD A WARNING ON THE SIDE OF IT ABOUT

JUDITH ANN OSSA, CSR NO. 2310

1007

1 180,000 TIMES; IS THAT CORRECT, SIR?  
2 A. COULD YOU REPEAT THAT. I'M SORRY.  
3 Q. YES. IN THE 20 YEARS AFTER SHE TURNED 18 YEARS  
4 OLD THAT SHE CONTINUED SMOKING, SHE TOOK A CIGARETTE OUT OF  
5 A PACK OF CIGARETTES THAT HAD A WARNING ON THE SIDE OF THE  
6 PACK ABOUT 180,000 TIMES; IS THAT CORRECT, SIR?  
7 A. I ASSUME IT'S CORRECT.  
8 AGAIN, WITH ALL THE DIFFERENT DATES, TIMES, AGES,  
9 I'D PROBABLY FEEL MORE COMFORTABLE IF WE PLOTTED IT, PUT  
10 ARROWS OF WHO BEGAN WHAT WHEN.  
11 BUT I THINK YOUR POINT IS SHE SAW THE WARNING OR  
12 SHE HAD THE OPPORTUNITY TO SEE THE WARNING ON THE PACK OF  
13 CIGARETTES A LOT OF TIMES DURING HER LIFE.  
14 Q. HUNDREDS OF THOUSANDS OF TIMES?  
15 A. I WOULD AGREE WITH THAT.  
16 MR. FURR: IS THIS CONVENIENT FOR THE COURT?  
17 THIS IS A GOOD PLACE FOR ME TO STOP, YOUR HONOR.  
18 THE COURT: JURORS, TOMORROW, I DO HAVE ANOTHER  
19 MATTER BEFORE WE START, BUT I WOULD LIKE TO START SHARPLY AT  
20 9:30.

21 SO I'M PRETTY CONFIDENT THAT I CAN -- I'M ALMOST  
22 SURE I CAN BEING FINISH THAT OTHER MATTER BY 9:30.  
23 SO OVER THE COURSE OF THE EVENING, PLEASE DON'T  
24 DISCUSS THIS CASE WITH ANYONE OR LET ANYONE DISCUSS IT WITH  
25 YOU. PLEASE DON'T FORM OR EXPRESS ANY OPINIONS ABOUT THE  
26 CASE.  
27 AND WE'LL SEE YOU TOMORROW BY 9:30 SHARP. HAVE A  
28 GOOD EVENING.

JUDITH ANN OSSA, CSR NO. 2310

1008

1 JURORS, BEFORE YOU GO, LET ME JUST TAKE CARE OF  
2 ONE HOUSEKEEPING MATTER.  
3 LET'S JUST MARK FOR IDENTIFICATION MR. FURR'S --  
4 ARE YOU GOING TO BE DOING FURTHER DRAWINGS ON YOUR  
5 CROSS-EXAMINATION SUCH THAT WE SHOULD WAIT TO HAVE THESE  
6 MARKED?  
7 MR. FURR: I THINK THAT IS LIKELY, YOUR HONOR.  
8 THE COURT: WE'LL HAVE THEM MARKED LATER.  
9 JURORS, HAVE A GOOD EVENING. WE'LL SEE YOU  
10 TOMORROW.  
11 (THE PROCEEDINGS ADJOURNED AT 4:25 P.M.)  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

JUDITH ANN OSSA, CSR NO. 2310